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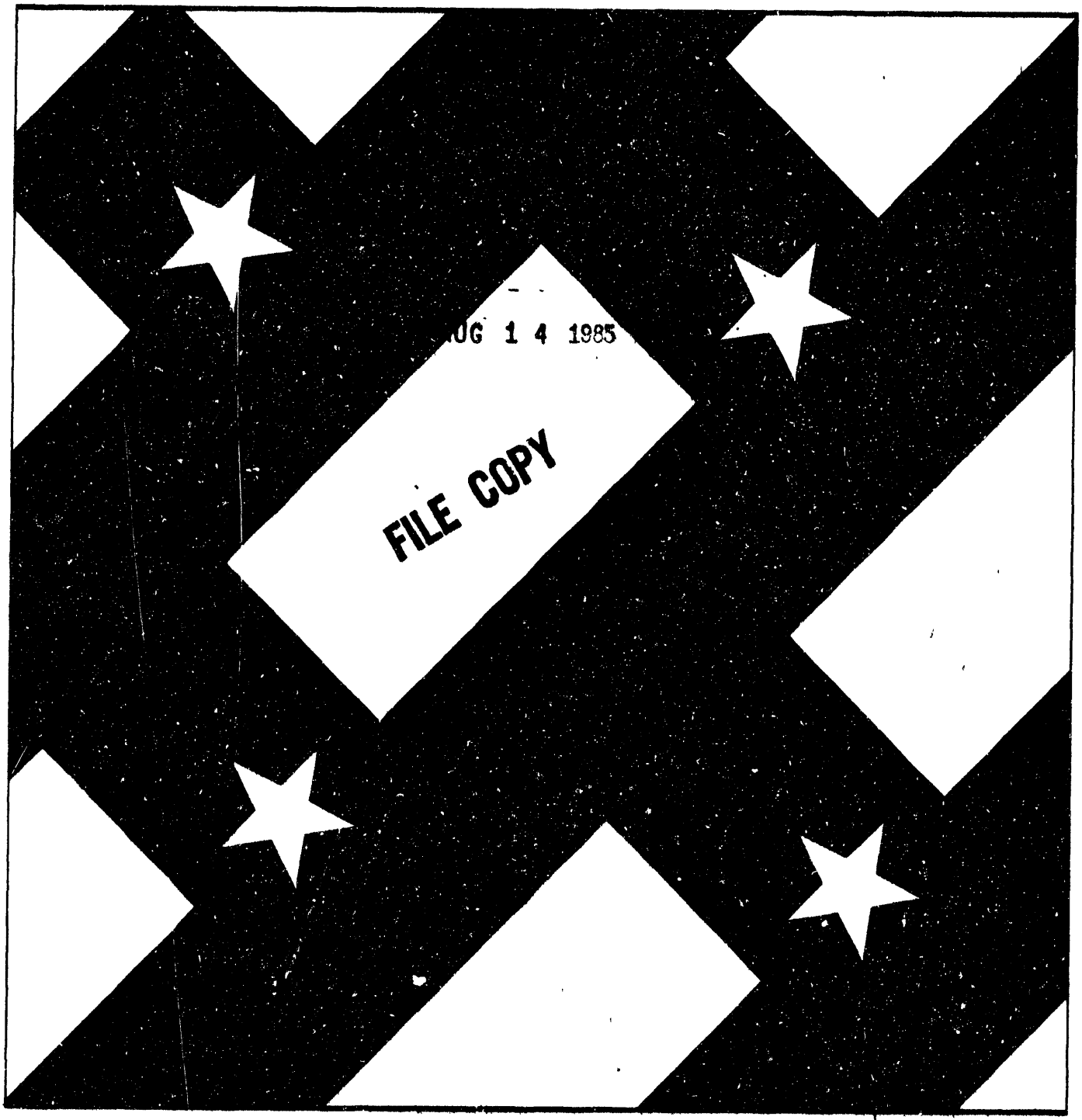

Highlights

Office of the Secretary of State

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1985 with the exception of June 25, July 9, August 30, December 3, and December 31, by the Office of the Secretary of State.

POSTMASTER: Please send Form 3579 changes to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824.

Information Available: The 11 sections of the *Register* represent various facets of state government. Documents contained within them include:

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules adopted following a 30-day public comment period
- Open Meetings—notices of open meetings
- The Legislature—bills submitted to, signed by, and vetoed by the Governor and bills that are submitted to the Governor and enacted without his signature
- In Addition—miscellaneous information required to be published by statute or provided as a public service

Specific explanations on the contents of each section can be found on the beginning page of the section. The division also publishes monthly, quarterly, and annual indexes to aid in researching material published.

How To Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "10 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 10 TexReg 3."

How To Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, 503E Sam Houston Building, Austin. Material can be found by using *Register* indexes, the *Texas Administrative Code*, rule number, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

How To Cite: Under the TAC scheme, each agency rule is designated by a TAC number. For example, in the citation 1 TAC §27.15:

- **1** indicates the title under which the agency appears in the *Texas Administrative Code*;
- **TAC** stands for the *Texas Administrative Code;*
- **27.15** is the section number of the rule (27 indicates that the rule is under Chapter 27 of Title 1; 15 represents the individual rule within the chapter).

Texas Register Publications

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Myra A. McDaniel
Secretary of State

Director
Dave Harrell

Documents Section Coordinator
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Cynthia Cooke,
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Production Editors
Melinda Vaughan, Jody Allen

Circulation Section Coordinator
Dee Wright

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TAC Editors
William Craig Howell
Hollis Glaser

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TAC Titles Affected

TAC Titles Affected—August

The following is a list of the administrative rules that have been published this month.

The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 475-3021.

Appointments Made July 31

30th Judicial District

To be criminal district attorney of the 30th Judicial District, Wichita County, until the next general election and until his successor shall be elected and duly qualified:

Barry L. Macha
County Courthouse
Wichita Falls, Texas 76301

Judge Macha is being appointed pursuant to Senate Bill 281, 69th Legislature, 1985.

Credit Union Commission

For a term to expire February 15, 1989:

Horace R. Grace
Route 1, Box 25
Killeen, Texas 76541

Mr. Grace is replacing Miguel San Juan of Houston, whose term expired.

Issued in Austin, Texas, on July 31, 1985.

TRD-857111 Mark White
Governor of Texas

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Emergency Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of this state. The rule may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing, for no more than 120 days. The emergency action is renewable once for no more than 60 days.

Symbology in amended emergency rules. New language added to an existing rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 335. Industrial Solid Waste Management

Subchapter A. Industrial Solid Waste Management in General

★31 TAC §335.2

The Texas Water Development Board is renewing the effectiveness of the emergency adoption of amended §335.2 for a 60-day period effective August 17, 1985. The text of the amended section originally was published in the April 26, 1985, issue of the *Texas Register* (10 TexReg 1311).

Issued in Austin, Texas, on August 6, 1985.

TRD-857096 Susan Plettman
General Counsel
Texas Water
Development Board

Effective date: August 17, 1985
Expiration date: October 16, 1985
For further information, please call (512) 463-8093.

★ ★ ★

Subchapter B. Hazardous Industrial Solid Waste Management General Provisions

★31 TAC §335.43, §335.45

The Texas Water Development Board is renewing the effectiveness of the emergency adoption of amended §335.43 and §335.45 for a 60-day period effective August 17, 1985. The text of the amended sections originally was published in the April 26, 1985, issue of the *Texas Register* (10 TexReg 1311).

Issued in Austin, Texas, on August 6, 1985.

TRD-857099 Susan Plettman
General Counsel
Texas Water
Development Board

Effective date: August 6, 1985
Expiration date: October 16, 1985
For further information, please call (512) 463-8093.

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Bingo Regulation and Tax

★34 TAC §3.549

The Comptroller of Public Accounts adopts on an emergency basis amendments to §3.549, concerning allowable expenditures of receipts from bingo. This amendment eliminates language relating to the distribution of net proceeds so that this section will coincide with a change being proposed in §3.556, concerning minimum charitable distributions.

The amendments are adopted on an emergency basis as an exercise of the comptroller's broad authority to regulate bingo through the exercise of close supervision as authorized by the legislature and is essential to provide clear direction to affected licensees and to insure proper compliance with reporting requirements.

This amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

§3.549. Allowable Expenditures of Receipts from Bingo.

(a)-(d) (No change.)

[(e) All net proceeds from the conduct of bingo shall be disbursed for charitable purposes no later than the last day of the quarter following the quarter in which the proceeds were earned. See §3.556 of this title (relating to Minimum Charitable Distribution) for specific information concerning the amount required to be distributed.]

(e)[(f)] No part of the net proceeds may be used, directly or indirectly, to support or oppose a particular candidate or a slate of candidates for public office, to support or oppose any measure submitted to a vote of the people, or to influence or attempt to influence legislation.

(f)[(g)] The license of any authorized organization which does not distribute the required amount of proceeds for charitable purposes during any quarter may be suspended or revoked.

(g)[(h)] No expenses may be paid out of the petty cash fund, except for emergency expenses validated by proper receipts.

(h)[(i)] The only expenses that may be paid from the petty cash fund are expenses necessary to continue or complete the operation of a bingo occassion.

Issued in Austin, Texas, on August 6, 1985.

TRD-857114 Bob Bullock
Comptroller of Public
Accounts

Effective date: August 6, 1985
Expiration date: October 23, 1985
For further information, please call (512) 463-4606.

★ ★ ★

★34 TAC §3.555

The Comptroller of Public Accounts adopts on an emergency basis amendments to §3.555, concerning certain charitable distributions. The amendments allow the establishment of dedicated funds for charitable purposes other than those relating to buildings used in the authorized activities of licensed authorized organizations. They also prohibit licensed authorized organizations from using money in a dedicated fund for any purpose other than for which the fund was established.

The amendments are adopted on an emergency basis to allow licensed authorized organizations to continue charitable activities such as scholarship programs or purchases of fire fighting equipment which necessarily involve the accumulation of funds over more than one quarter. Without this amendment the accumulation of such funds would be prohibited because of the requirements of §3.556 concerning minimum charitable distributions.

This amendment is adopted on an emergency basis as an exercise of the comptroller's broad authority to regulate bingo through the exercise of close supervision as authorized by the legislature and is essential to provide clear direction to affected licensees and to ensure proper compliance with reporting requirements.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

§3.555. Certain Charitable Distributions.

(a) (No change.)

(b) The expenditures under subsection (a) of this section may be considered a charitable distribution only with regard to premises which are or will be used for those charitable purposes stated in the Bingo Enabling Act, §2(9)(A) and (B), **Texas Civil Statutes, Article 179d,** and in §3.544 of this title (relating to Definitions). That part of a lease payment authorized as a charitable distribution under subsection (a) of this section qualifies only if the licensed authorized organization does not own premises adequate and suitable for conducting games.

(c) (No change.)

(d) Licensed authorized organizations may also establish a separate interest bearing account dedicated to another specific charitable purpose of the type stated in the Bingo Enabling Act, §2(9)(A) and (B) and in §3.544 of this title (relating to Definitions), such as scholarships, ongoing youth programs, or the purchase of fire fighting equipment. An organization may establish more than one such fund, so long as each separate fund is dedicated to a separate specific purpose. Complete records of deposits to and expenditures from each dedicated fund shall be available for inspection by the comptroller.

(e)[(d)] A deposit of money into the organization's dedicated **building** fund may be considered a distribution for charitable purposes under the same guidelines as are provided in this section with regard to mortgage payments. **A deposit of money into another dedicated fund of the organization may be considered a distribution for charitable purposes.**

(f) licensed authorized organization which has deposited money in a dedicated fund established under this section may not use that money for any purpose other than that for which the fund was established.

(g)[(e)] A licensed authorized organization which has established a dedicated [building] fund under [subsection (c) of] this section and which ceases to conduct bingo must disburse the balance in the fund for a charitable purpose not later than the last day of the quarter following the quarter in which the organization ceases to conduct bingo.

Issued in Austin, Texas, on August 6, 1985.

TRD-857115 Bob Bullock
Comptroller of Public Accounts

Effective date: August 6, 1985
Expiration date: September 28, 1985
For further information, please call (512) 463-4606.

★ ★ ★

★34 TAC §3.556

The Comptroller of Public Accounts adopts on an emergency basis amendments to §3.556, concerning minimum charitable distribution. The amendments clearly require each licensed authorized organization to distribute to charity each quarter an amount not less than 35% of their adjusted gross receipts from the last preceding quarter. The amendments make clear that the 35% minimum is to be based on the quarter before the quarter covered by the report. The amendments are adopted on an emergency basis so that licensed authorized organizations will know exactly what is required of them during the current quarter.

The amendments are adopted on an emergency basis as an exercise of the comptroller's broad authority to regulate bingo through the exercise of close supervision as authorized by the legislature and is essential to provide clear direction to affected licensees and to ensure proper compliance with reporting requirements.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

§3.556. Minimum Charitable Distribution.

(a) (No change.)

(b) **By the end of each quarter,** [each] licensed authorized organization shall disburse for charitable purposes **an** [all of its net proceeds from the conduct of bingo, and that] amount [may] not [be] less than 35% of the c ganization's adjusted **gross receipts from the last preceding quarter.**

[(c) Net proceeds shall be disbursed for charitable purposes by the last day of the quarter following the quarter in which the proceeds were earned.]

Issued in Austin, Texas, on August 6, 1985.

TRD-857116 Bob Bullock
Comptroller of Public Accounts

Effective date: August 6, 1985
Expiration date: September 28, 1985
For further information, please call (512) 463-4606.

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Proposed Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the rule. Also, in the case of substantive rules, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

★16 TAC §3.8

The Railroad Commission of Texas proposes amendments to §3.8, concerning water protection. These amendments exclude discharges that will be regulated under proposed §3.75 from the permit provisions of §3.8. They also delete the provisions of §3.8 that authorize discharges that will have to be permitted under proposed §3.75. In addition, they modify several definitions consistent with recent amendments to Texas National Resources Code, §91.101, and they correct some typographical errors. These amendments will not go into effect until the effective date of §3.75.

Lori Wrotenbery, staff attorney, Underground Injection Control Section of the Oil and Gas Division, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Ms. Wrotenbery also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is the avoidance of any duplication of permit requirements in §3.8 and proposed §3.75, and the elimination of any conflict between §3.8 and proposed §3.75.

Comments on the proposal may be submitted to Lori Wrotenbery, Staff Attorney, Underground Injection Control Section, Oil and Gas Division, Railroad Commission of Texas, P. O. Drawer 12967, Austin, Texas 78711. Written comments will be received for 30 days from the date of publication of the proposed amendments. A public hearing on the proposed amendments will be held at 9 a.m. on August 29, 1985, in either the William B. Travis Building, 1701 North Congress, Austin, or the Railroad Commission Building, 1124 South IH 35, Austin. Persons planning to attend the hearing should call (512) 463-6790 or (512) 445-1373 immediately before the hearing date to find out where it will be held.

The amendments are proposed under the Texas National Resources Code, §91.101 and §141.012, which provides the Railroad Commission of Texas with the authority to adopt rules to prevent the pollution of surface and subsurface water which might result from activities associated with the exploration, development, and production of oil, gas, or geothermal resources.

§3.8. Water Protection.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1)-(25) (No change.)

(26) Oil and gas wastes—Materials to be disposed of or reclaimed which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, **including** [or] activities associated with underground storage of hydrocarbons. The term oil and gas wastes includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material.

(27) Oil field fluids—Fluids to be used or reused in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, **including** [or] activities associated with underground storage of hydrocarbons. The term oil field fluids includes, but is not limited to, drilling fluids, completion fluids, surfactants, and chemicals used to detoxify oil and gas wastes.

(28) (No change.)

(29) Surface or subsurface water-Groundwater, percolating or otherwise, **including groundwater** suitable for domestic or livestock use, irrigation of crops, or industrial use, and lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(b)-(c) (No change.)

(d) Pollution control.

(1) Prohibited disposal methods. Except for those disposal methods authorized for certain wastes by paragraph (3) of this subsection [or subsection (e) of this section], [or] disposal methods **required to be** permitted pursuant to §3.9 of this title (relating to Disposal Wells) **(Rule 9)** or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) **(Rule** [Rules 9 or] **46), or disposal methods authorized or required to be permitted pursuant to §3.75 of this title (relating to Discharges to Waters of the State) (Rule 77)**, no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. [The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water.]

(2)-(3) (No change.)

(4) Authorized pits. A person may, without a permit, maintain or use reserve pits, mud circulation pits, completion/workover pits, basic sediment pits, flare pits, fresh makeup water pits, and water condensate pits on the following conditions:

(A)-(F) (No change.)

(G) Backfill requirements.

(i) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, completion/workover pit, basic sediment pit, flare pit, or water condensate pit shall dewater, backfill, and compact the pit according to the following schedule:

(I)-(II) (No change.)

(III) All completion/workover pits used when completing a well **shall** be dewatered within 30 days and backfilled and compacted **within** [with] 120 days of well completion. All completion/workover pits used when working over a well shall be dewatered within 30 days and backfilled and compacted within 120 days of completion of workover operations.

(IV)-(V) (No change.)

(ii)-(iv) (No change.)

(5) (No change.)

(6) Permits. **Except when the provisions of paragraph (7)(B) of this subsection (d) concerning renewal permits are to the contrary, the issuance, denial, modification, suspension, or termination of permits required by paragraph (1) or (2) of this subsection shall be governed by the following provisions:**

(A)-(B) (No change.)

(C) Notice. The applicant shall give notice of the permit application to the surface owners [owner] of the tract upon which the pit will be located or upon which the disposal will take place. When the tract upon which the pit will be located or upon which the disposal will take place lies within the corporate limits of an incorporated city, town, or village, the applicant shall also give notice to the city clerk or other appropriate official. [Where disposal is to be by discharge into a watercourse other than the Gulf of Mexico or a bay, the applicant shall also give notice to the surface owner of each waterfront tract between the discharge point and ½ mile downstream of the discharge point except for those waterfront tracts within the corporate limits of an incorporated city, town, or village. When one or more waterfront tracts within ½ mile of the discharge point lie within the corporate limits of an incorporated city, town, or village, the applicant shall give notice to the city clerk or other appropriate official.] Notice of the permit application shall consist of a copy of the application together with a statement that any protest to the application should be filed with the commission within 15 days of the date the application is filed with the commission. The applicant shall mail or deliver the required notice to the surface owners and the city clerk or other appropriate official on or before the date the application is mailed or delivered to the commission in Austin. If, in connection with a particular application, the director determines that another class of persons, such as offset operators, adjacent surface owners, or an appropriate river authority, should receive notice of the application, the director may require the applicant to mail or deliver notice to members of that class. If the director determines that, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required by this subparagraph (C) to be notified, then the director may authorize the applicant to notify such persons by publishing notice of the application. The director shall be published once each week for two consecutive weeks by the applicant in a newspaper of general circulation in the county where the pit will be located or the disposal will take place. The applicant shall file proof of publication with the commission in Austin. **For purposes of this subparagraph, the term "surface owners" means surface owners identified on the current county tax rolls, or determined from other sources of information approved by the director.**

(D) (No change.)

(E) Modification, suspension, and termination. A permit granted pursuant to this paragraph (6), or a renewal permit granted pursuant to paragraph (7) of this subsection, [or a permit which has been issued by the commission prior to the effective date of this subsection but which does not expire pursuant to paragraph (7) of this subsection,] may be modified, suspended, or terminated by the commission for good cause after notice and opportunity for hearing. A finding of any of the following facts shall constitute good cause:

(i)-(vi) (No change.)

(F)-(G) (No change.)

(7) Existing permits and pits.

(A) Existing permits. Each permit to maintain or use a lined or unlined pit for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters, which has been issued by the commission prior to the effective date of this subsection, shall expire 180 days after the effective date of this subsection. Every other permit to store oil field fluids or oil and gas wastes or to dispose of oil and gas wastes, which permit has been issued by the commission prior to the effective date of this subsection, shall remain in effect until it is modified, suspended, or terminated by the commission **for good cause, or, if it is scheduled to expire** pursuant to **§3.75 of this title (relating to Discharges to Waters of the State) (Rule 77), until it expires pursuant to that section** [to paragraph (6)(E) of this subsection] The permits which will expire pursuant to this paragraph (7) include, but are not limited to, permits for the following types of pits: saltwater disposal pits, emergency saltwater storage pits, skimming pits, and brine pits.

(B)-(D) (No change.)

(e) **Operations conducted on surface water** [Pollution prevention (reference Order Number 20-59,200, effective May 1, 1969)].

[(1) The operator shall not pollute the waters of the Texas offshore and adjacent estaurine zones (salt water-bearing bays, inlets, and estuaries) or damage the aquatic life therein.]

(1)[(2)] In all oil, gas, and geothermal resource well drilling and producing operations **conducted on surface water** [shall be conducted in such a manner to preclude the pollution of the waters of the Texas offshore and adjacent estuarine zones. Particularly], the following procedures shall be utilized to prevent pollution:

[(A) The disposal of liquid waste material into the Texas offshore and adjacent estuarine zones shall be limited to saltwater and other materials which have been treated, when necessary, for the removal of constituents which may be harmful to aquatic life or injurious to life or property.

[(B) No oil or other hydrocarbons in any form or combination with other materials or constituent shall be disposed of into the Texas offshore and adjacent estuarine zones.]

(A)[(C)] **Deck drainage.** All deck areas on drilling platforms, **producing platforms,** barges, workover **units** [unit], and associated equipment, both floating and stationary, subject to contamination **shall** be either curbed and connected by drain to a collecting tank, sump, or enclosed **drilling slot in which the contaminant will be collected,** [containment will be treated and disposed of without causing hazard or pollution;] or else drip pans, or their equivalent, shall be placed under any equipment which might reasonably be considered a source from which pollutants may escape into surrounding water. These drip pans must be piped to collecting tanks, sumps, or enclosed drilling slots designed to accommodate all reasonably expected drainage. Satisfactory means must be provided to empty the sumps or enclosed drilling slots to prevent overflow or prevent pollution of the surrounding water.

(B)[(D)] **Solid Wastes.** Solid combustible waste may be burned and the ashes may be disposed of into Texas offshore and adjacent estuarine zones.] Solid wastes such as cans, bottles, or any form of trash must be transported to shore in appropriate containers. [Edible garbage, which may be consumed by aquatic life without harm, may be disposed of into Texas offshore and adjacent estuarine zones.]

(C)[(E)] **Drilling muds.** Drilling muds which contain oil shall be transported to shore or a designated area for disposal. [Only oil-free cuttings and fluids from mud systems may be disposed of into Texas offshore and adjacent estuarine zones at or near the surface.]

(D)[(F)] **Produced fluids.** Fluids produced from offshore wells shall be mechanically contained in adequately pressure-controlled piping or vessels from producing well to disposition point. Oil and water separation facilities at offshore and onshore locations shall contain safeguards to prevent **escape** [emission] of pollutants to **surface water** [the Texas offshore and adjacent estuarine zones prior to proper treatment].

[(G) All deck areas on producing platforms subject to contamination shall be either curbed or connected by drain to a collecting tank or sump in which the containment will be treated and disposed of without causing hazard or pollution, or else drip pans, or their equivalent, shall be placed under any equipment which might reasonably be considered a source from which pollutants may escape into surrounding water. These drip pans must be piped to collecting tanks or sumps designed to accommodate all reasonably expected drainage. Satisfactory means must be provided to empty the sumps to prevent overflow.]

(E)[(H)] **Duty to report pollution.** Any person observing water pollution shall report such sighting, noting size, material, location, and current conditions to the ranking operating personnel. Immediate action or notification shall be made to eliminate further pollution. The operator shall then transmit the report to the appropriate commission district office.

(F)[(I)] **Corrective action.** Immediate corrective action shall be taken in

all cases where pollution has occurred. An operator responsible for the pollution[,] shall remove immediately such oil, oil field waste, or other pollution materials from the waters and the shore line where it is found. Such removal operations will be at the expense of the responsible operator.

(2)[(3)] The commission may suspend producing and/or drilling operations from any facility when it appears that the provisions of this rule are being violated.

[(4) (Reference Order 20-60, 214, effective 10-1-70.) The foregoing provisions of Rule 8(D) shall also be required and enforced as to all oil, gas, or geothermal resource operations conducted on the inland and fresh waters of the State of Texas, such as lakes, rivers, and streams.]

(f)-(h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 7, 1985.

TRD-857129 Walter Earl Lilie
Special Counsel
Railroad Commission of Texas

Proposed date of adoption:
September 30, 1985
For further information, please call (512) 445-1186.

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 337. Water Hygiene

Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems

★25 TAC §§337.3, 337.4, 337.6-337.10, 337.12, 337.13, 337.17

The Texas Department of Health proposes amendments to §§337.3-337.4, 337.6-337.10, 337.12, 337.13, 337.17, and new §337.18, concerning drinking water standards governing drinking water quality and reporting requirements for public water systems. The major changes consist of adding §337.18, fees for services to drinking water systems, changing §337.4 (2), and adding §337.6(b) to reduce the required frequency of microbiological testing for smaller water systems, and adding §337.6(c) to allow chlorine residual monitoring for substitution of monthly bacteriological samples. Other changes will allow up to 20 milligrams per liter (mg/l) nitrate (as N) levels in noncommunity public water systems, allow substitution of consecutive daily microbiological samples for a positive routine monthly sample, modify public notification requirements, and delete dates which have been passed and are no longer applicable.

Stephen Seale, chief accountant III, has determined that for the first five years the rules are in effect there will be fiscal implications as a result of enforcing or administering the rules. The anticipated effect on state government is an estimated additional cost of $572,106 in 1986 and an additional cost of $580,881 each year in 1987-1990. There will be an estimated increase in revenue of $1,289,750 each year in 1986-1990. There is an anticipated additional cost to local governments which intend to use the Department of Health laboratory for microbiological services. However, there is an anticipated increase in revenue to local governments which have local health department microbiological laboratories. It is anticipated that the net effect on local governments as a whole will not be material. The cost of compliance with the rules for small business will be the fees as set out in §337.18 of the standards. A small water system with 16 connections could expect a cost of $1.43 per $100 of gross income. A large water system with 2,400 connections could expect a cost of $ 16 per $100 of gross income. A very large system with 200,000 connections could expect a cost of $ .015 per $100 of gross income.

Mr. Seale also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is the reduction of the cost to the State of Texas for public health services provided by the Division of Water Hygiene and the Laboratory of the Texas Department of Health. The anticipated economic cost to individuals who are required to comply with the rules as proposed will be the fees as set out in §337.18 of the rules.

Comments on the proposal may be submitted to Thomas D. Tiner, P.E., Director, Division of Water Hygiene, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3192. Comments will be accepted for 30 days after publication of the proposed rule. In addition, a public hearing on the proposed new rules will be held at 10 a.m. on Monday, September 16, 1985, in the auditorium, Texas Department of Health, 1100 West 49th Street, Austin.

The amendments are proposed under Texas Civil Statutes, Article 4414c, §2, which authorizes the Texas Board of Health to charge fees to persons who receive public health services from the department, and Article 4477-1, §23, which authorizes the Texas Board of Health to adopt rules covering drinking water and water systems.

§337.3. Standards of Chemical [and Radiological] Quality. All analyses to determine compliance shall be performed by laboratories approved by the department. Analyses shall be performed on treated water as furnished to the customer.

(1) **Inorganics.** Maximum constituent levels for nitrate are applicable to both the community and noncommunity water systems, except as provided in paragraph (2) of this section. The other constituent limits in the following table are applicable only to community type systems.

Constituent	Level, Milligrams Per Liter
Arsenic	0.05
Barium	1
Cadmium	0.010
Chromium	0.05
Lead	0.05
Mercury	0.002
Nitrate (as N)	10
Selenium	0.01
Silver	0.05

(2) **Nitrate. At the discretion of the department, nitrate (as N) levels not to exceed 20 milligrams/liter may be allowed in a noncommunity system if the supplier of water demonstrates to the satisfaction of the department that:**

(A) such water will not be available to children under six months of age;

(B) there will be continuous posting of the fact that nitrate levels exceed 10 milligrams/liter and the potential health effects of exposure;

(C) local and state public health authorities will be notified that nitrate levels exceed 10 milligrams/liter; and

(D) no adverse health effects shall result.

(3)[(2)] **Fluoride.** When the annual average of the maximum daily air temperatures for the location in which the community water system is situated is the following, the maximum allowable levels for fluoride are as follows:

Temperature Degrees F	Temperature Degress C	Level, Milligrams Per Liter
63.9 to 70.6	17.7 to 21.4	1.8
70.7 to 79.2	21.5 to 26.2	1.6
79.3 to 90.5	26.3 to 32.5	1.4

(4)[(3)] **Organics.** Maximum constituent levels for organic chemicals for community systems.

(A)-(B) (No change).

(5)[(4)] Maximum allowable levels for turbidity. This standard shall apply only to systems which treat surface water. The maximum allowable levels for turbidity in drinking water measured at a representative entry point(s) to the distribution system are as follows:

(A)-(B) (No change.)

(C) Exceptions to the five or fewer turbidity units must be by written request for a specific time frame and submitted to the department prior to that time.

(6)[(5)] Verification of excessive chemical level.

(A) (No change.)

(B) When a level exceeding the maximum allowable level for nitrate is found, a second analysis must be initiated within 24 hours of receipt of notification. If the mean of the two samples exceeds the allowable level, the supplier of water must report to the department and notify the public, in accordance with paragraph (8) [(7)] of this subsection.

(7)[(6)] Variances and exemptions. Variances and exemptions shall be defined as follows:

(A) (No change.)

(B) Exemption--Exception to a provision of these standards where, because of compelling factors (which may include economic), the system is unable to comply with a specified allowable level. An exemption may be granted only under the following circumstances:

(i) the public water system requesting the exemption was in operation on the date these standards became effective, **or for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system;**

(ii) (No change.)

(iii) a schedule is established to bring the system into compliance with the standard in question [by January 1, 1981, if additional treatment is to be provided, or by January 1, 1983, if regional facilities are to be used].

(C) Variances and exemptions, as previously defined, may be granted at the discretion of the department. Applications for such variances and/or exemptions must be submitted by the water system requesting a variance or exemption and must include the following:

(i)-(ii) (No change.)

(iii) a long range plan for the correction of the problem. This plan or compliance schedule must be submitted within one year following written notification that a variance or exemption has been granted. [For all exemptions, the compliance schedule must specify correction of the problem by January 1, 1981, if additional treatment is to be provided, or by January 1, 1983, if a regional facility is planned].

(iv) (No change.)

(D) a variance or exemption covering a group or class of systems with a common standard which is not met may be issued by the department without individual application. However, individual compliance schedules will be required for each such system within one year following written notification by the department that such a variance or exemption has been granted. After receiving notification from the department that a group or class variance or exemption has been issued to their system, each system must submit the previously mentioned items in accordance with **subparagraph (C)*(ii)-(iv)*** of this paragraph [(7)(A)*(i)-(iv)*] of this subsection.

(E)-(F) (No change.)

(8)[(7)] Public notification requirements.

(A)-(B) (No change.)

(C) Status reports required under subparagraph (A) of this paragraph must be issued as follows:

(i)-(iii) (No change.)

(iv) **The requirements of clause *(iii)* of this subparagraph may be waived by the department if it determines that the violation has been corrected promptly after discovery and the cause of the violation has been eliminated.**

(D) Example copies of all status reports required under this subsection must be sent to the department within 10 days of its distribution as proof of notification.

§337.4. Control Tests. These tests permit the operator of the system to judge variations in water quality, to identify objectionable water characteristics, and to detect the presence of foreign substances which may adversely affect the potability of the water. These control tests shall be performed in accordance with procedures approved by the department.

(1) Surface supplies. Operators of water treatment plants utilizing coagulation, settling, softening, or filtration shall perform daily the following chemical control tests on the filtered water, list them on the monthly report of water works operation and submit a copy of this report to the department after each month of operation.

Test	Applicability
Turbidity	All Public Supplies
pH	Community Type Systems Only
Alkalinity	Community Type Systems Only
Chlorine Residual	**All Public Supplies** [Community Type Systems Only]

(2) Water samples for bacteriological quality. The minimum number of samples to be collected from a public water supply and submitted for examination shall be in accordance with the following table with the exception of noncommunity water systems which meet the conditions of §337.6 (c) [§337.6(b)] of this title (relating to Microbiological Contaminant Sampling and Analytical Requirements). **The department may require a sampling frequency in excess of the minimum number of monthly samples.**

Population Served	Minimum Number of Samples Per Month
0 to 1,000	1
1,001 to 2,500 [0 to 1,000]	2
2,501 [1,001] to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 9,400	10
9,401 to 10,300	11
10,301 to 11,100	12
11,101 to 12,000	13
12,001 to 12,900	14
12,901 to 13,700	15
13,701 to 14,600	16
14,601 to 15,500	17
15,501 to 16,300	18
16,301 to 17,200	19
17,201 to 18,100	20
18,101 to 18,900	21
18,901 to 19,800	22
19,801 to 20,700	23
20,701 to 21,500	24
21,501 to 22,400	25
22,401 to 23,200	26
23,201 to 24,000	27
24,001 to 24,900	28
24,901 to 25,000	29
25,001 to 28,000	30
28,001 to 33,000	35
33,001 to 37,000	40
37,001 to 41,000	45
41,001 to 46,000	50

46,001 to 50,000	55
50,001 to 54,000	60
54,001 to 59,000	65
59,001 to 64,000	70
64,001 to 70,000	75
70,001 to 76,000	80
76,001 to 83,000	85
83,001 to 90,000	90
90,001 to 96,000	95
96,001 to 111,000	100
111,001 to 130,000	110
130,001 to 160,000	120
160,001 to 190,000	130
190,001 to 220,000	140
220,001 to 250,000	150
250,001 to 290,000	160
290,001 to 320,000	170
320,001 to 360,000	180
360,001 to 410,000	190
410,001 to 450,000	200
450,001 to 500,000	210
500,001 to 550,000	220
550,001 to 600,000	230
600,001 to 660,000	240
660,001 to 720,000	250
720,001 to 780,000	260
780,001 to 840,000	270
840,001 to 910,000	280
910,001 to 970,000	290
970,001 to 1,050,000	300
1,050,001 to 1,140,000	310
1,140,001 to 1,230,000	320
1,230,001 to 1,320,000	330
1,320,001 to 1,420,000	340
1,420,001 to 1,520,000	350
1,520,001 to 1,630,000	360
1,630,001 to 1,730,000	370
1,730,001 to 1,850,000	380
1,850,001 to 1,970,000	390
1,970,001 to 2,060,000	400
2,060,001 to 2,270,000	410
2,270,001 to 2,510,000	420
2,510,001 to 2,750,000	430
2,750,001 to 3,020,000	440
3,020,001 to 3,320,000	450
3,320,001 to 3,620,000	460
3,620,001 to 3,960,000	470
3,960,001 to 4,310,000	480
4,310,001 to 4,690,000	490
4,690,001 or more	500

§337.6. Microbiological Contaminant Sampling and Analytical Requirements.

(a) (No change.)

(b) A supplier of water of a community water system may, with the approval of the department and based upon a sanitary survey, substitute the use of chlorine residual monitoring for not more than 75% of the samples required to be taken by §337.4(2) of this title (relating to Control Tests). This may be done provided the supplier of water takes chlorine residual samples at points which are representative of the conditions within the distribution system at the frequency of at least four for each substituted microbiological sample. There shall be at least daily determination of chlorine residual. When the supplier of water exercises the option provided in this subsection, a total chlorine residual of at least 0.5 milligrams/liter shall be maintained throughout the public water distribution system. Analyses for chlorine residual shall be made in accordance with "Standard Methods for the Examination of Water and Wastewater," 16th Edition, pages 306-310. Field test kits employing the DPD method of chlorine residual testing which are accepted by the U.S. Environmental Protection Agency or the department may be used for chlorine residual monitoring as required in this subsection. The chlorine residuals must be reported to the department on the "Monthly Report of Water Works Operation" form. The department may withdraw its approval of the use of chlorine residual substitution at any time.

(c)[(b)] Based on a history of no coliform bacterial contamination and on a sanitary survey by the department showing the water system to be supplied solely by a protected ground water source and free of sanitary defects, a noncommunity water system, with written permission from the department, may reduce the number of samples submitted except that in no case shall it be reduced to less than one per month.

(d)[(c)] When the coliform bacteria in a single sample examined using the membrane filter technique exceed four per 100 milliliters, at least two consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the department, until the results obtained from at least two consecutive check samples show less than one coliform bacterium per 100 milliliters.

(e)[(d)] When coliform bacteria occur in three or more 10-milliliter portions of a single sample examined using the multiple tube fermentation technique, at least two consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the department, until the results obtained from at least two consecutive check samples show no positive tubes.

(f)[(e)] The location at which the check samples were taken shall not be eliminated from future sampling without approval of the department. The results from all coliform bacterial analyses performed pursuant to this subpart, except those obtained from check samples and special purpose samples, shall be used to determine compliance with the maximum contaminant level for coliform bacteria. Check samples shall not be included in calculating the total number of samples taken each month to determine compliance.

(g) A positive routine monthly sample may be excluded from calculation with compliance to §337.5 of this title (relating to Maximum Bacteriological Contaminant Levels) on a case-by-case basis if:

(1) the department determines that no unreasonable risk to health existed using but not limited to the following factors:

(A) the public water system maintained an active chlorine residual in the distribution system;

(B) the evaluation of potential contamination by a sanitary survey;

(C) the history of the systems water quality monitoring efforts;

(2) the supplier of water collects check samples on each of two consecutive days from the same sampling point within 24 hours after notification that the routine sample is positive, or as soon as possible if the laboratory is closed, and each of these check samples is negative.

(h)[(f)] When the presence of coliform bacteria in water taken from a particular sampling point has been confirmed by any check samples examined as directed in this section, the supplier of water shall report to the department within 48 hours.

(i)[(g)] When a maximum contaminant level set forth in this section is exceeded the supplier of water shall report to the department and notify the public, as prescribed in **§337.3(8)** [§337.3(7)] of this title (relating to Standards of Chemical [and Radiological] Quality).

(j)[(h)] Special purpose samples, such as those taken to determine whether disinfection practices following pipe placement, replacement, or repair have been sufficient, shall not be used to determine compliance with this section.

(k) Where water systems are required to submit less than four samples per month, compliance with the limits established in §337.5 of this title (relating to Maximum Bacteriological Contaminant Levels) shall be determined on a three month basis, instead of monthly.

(l) Microbiological samples reported only as unsuitable for analysis (i.e., confluent growth, heavy silt present, too old for analysis, insufficient quantity, not in approved container, etc.) will not be counted as meeting the minimum number of samples required in §337.4(2) of this title (relating to Control Tests). However, microbiological samples reporting coliform found plus confluent growth or too numerous to count will be considered positive samples and subject to compliance with the limits in §337.5 of this title (relating to Maximum Bacteriological Contaminant Levels).

§337.7. Turbidity Sampling and Analytical Requirements.

(a) Samples shall be taken by suppliers of water for both community water systems and noncommunity water systems at a representative entry point(s) to the water distribution system at least once per day, for the purpose of making turbidity measurements to determine compliance with **§337.3(5)**[§337.3(4)] of this title (relating to Standards of Chemical [and Radiological] Quality). The measurement shall be made by the Nephelometric Method in accordance with the recommendations set forth in "Standard Methods for the Examination of Water and Wastewater," American Public Health Association, **Sixth** [14th] Edition, pages **34-136** [132-134], or "Methods for Chemical Analysis of Water and Wastes," **pages 295-298**, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(b) If the result of a turbidity analysis indicates that the maximum allowable level has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable and preferably within one hour. If the repeat sample confirms that the maximum allowable limit has been exceeded, the supplier of water shall report to the department within 48 hours. The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples taken on consecutive days exceeds five TU, the supplier of water shall report to the department and notify the public in accordance with **§337.3(8)** [§337.3(7)] of this title (relating to Standards of Chemical [and Radiological] Quality).

[(c) Sampling for noncommunity water systems shall begin by June 24, 1979.]

(c)[(d)] The requirements of this section shall apply only to public water systems which use water obtained in whole or in part from surface sources.

§337.8. Inorganic Chemical Sampling and Analytical Requirements.

(a) Analyses for the purpose of determining compliance with §337.3(1) of this title (relating to Standards of Chemical [and Radiological] Quality) are required as follows:

(1) Analyses for all community water systems utilizing surface water sources [shall be completed by June 24, 1978. These analyses] shall be **performed** [repeated] at yearly intervals.

(2) Analyses for all community water systems utilizing only ground water sources [shall be completed by June 24, 1979. These analyses] shall be **performed** [repeated] at three-year intervals.

(3) For noncommunity water systems, whether supplied by surface or ground water sources, analyses for nitrate [shall be completed by June 24, 1979. These analyses] shall be **performed** [repeated] at intervals determined by this department. None of the other maximum constituent levels for inorganics are applicable to noncommunity systems.

(b) (No change.)

(c) When the average of four analyses made pursuant to subsection (b) of this section, rounded to the same number of significant figures as the maximum constituent level for the substance in question, exceeds the maximum constituent level, the supplier of water shall notify the department and give notice to the public, in accordance with **§337.3(8)** [§337.3(7)] of this title (relating to Standards of Chemical [and Radiological] Quality). Monitoring after public notification shall be at a frequency designated by the department and shall continue until the maximum constituent level has not been exceeded in two successive samples or until a monitoring schedule as a condition to a variance, exemption, or enforcement action shall become effective.

(d) The provisions of subsections (b) and (c) of this section notwithstanding, compliance with the maximum constituent level for nitrate shall be determined on the basis of the mean of two analyses. When a level exceeding the maximum constituent level for nitrate is found, a second analysis shall be initiated within 24 hours, and if the mean of the two analyses exceeds the maximum constituent level, the supplier of water shall report his findings to the department and shall notify the public in accordance with **§337.3(8)** [§337.3(7)] of this title (relating to Standards of Chemical [and Radiological] Quality).

[(e) For the initial analyses required by subsections (a)(1) and (2) and (b)(3) of this section, data for surface waters acquired within one year prior to June 24, 1977, and data for ground waters acquired within three years prior to June 24, 1977, may be substituted at the discretion of the department.]

§337.9. Organic Chemical Sampling and Analytical Requirements.

(a) An analysis of substances for the purpose of determining compliance with **§337.3(4)** [§337.3(3)] of this title (relating to Standards of Chemical [and Radiological] Quality) shall be made as follows.

(1) For all community water systems utilizing surface water sources, **samples** [analyses shall be completed by June 24, 1978. Samples analyzed] shall be collected during the period of the year designated by the department as the period when contamination by pesticides is most likely to occur. These analyses shall be repeated no less frequently than at three-year intervals.

(2) (No change.)

(b) (No change.)

(c) When the average of four analyses made pursuant to subsection (a) of this section, rounded to the same number of significant figures as the maximum constituent level for the substance in question, exceeds the maximum constituent level, the supplier of water shall report to the department and give notice to the public pursuant to **§337.3(8)** [§337.3(7)] of this title (relating to Standards of Chemical [and Radiological] Quality). Monitoring after public notification shall be at a frequency designated by the department and shall continue until the maximum constituent level has not been exceeded in two successive samples or until a monitoring schedule as a condition to a variance, exemption, or enforcement action shall become effective.

[(d) For the initial analysis required by subsection (a)(1) and (2) of this section, data for surface water acquired within one year prior to June 24, 1977, and data for ground water acquired within three years prior to June 24, 1977, may be substituted at the discretion of the department.]

§337.10. Radiological Sampling and Analytical Requirements.

(a)-(b) (No change.)

(c) Monitoring frequency for radioactivity in community water systems.

(1) Monitoring requirements for gross alpha particle activity, radium-226 and radium-228.

(A) [Initial sampling to determine compliance with subsection (a) of this section shall begin by June 24, 1979, and the analysis shall be completed by June 24, 1980.] Compliance **with subsection (a) of this section** shall be based on the analysis or analyses of four samples obtained at quarterly intervals.

(i)-(ii) (No change.)

[(B) For the initial analysis required by subparagraph (A) of this paragraph, data acquired within one year prior to the effective date of this section may be substituted at the discretion of the department.]

(B)[(C)] Suppliers of water shall monitor at least once every four years following the procedure required by subparagraph (A) of this paragraph. At the discretion of the department, when an annual record taken in conformance with subparagraph (A) of this paragraph has established that the average annual concentration is less than half the maximum contaminant levels established by subsection (a) of this section, analysis of a single sample may be substituted for the quarterly sampling procedure required by subparagraph (A) of this paragraph.

(i)-(v) (No change.)

(C)[(D)] If the average annual maximum contaminant level for gross alpha particle activity or total radium as set forth in subsection (a) of this section is exceeded, the supplier of a community water system shall give notice to the department and notify the public as required by **§337.3(8)** [§337.3(7)] of this title (relating to Standards of Chemical [and Radiological] Quality). Monitoring at quarterly intervals shall be continued until the annual average concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption, or enforcement action shall become effective.

(2) Monitoring requirements for man-made radioactivity in community water systems.

(A) [By June 24, 1979,] Systems using surface water sources and serving more than 100,000 persons and such other community water systems as are designated by the department shall be monitored for compliance with subsection (b) of this section by analysis of four quarterly samples. Compliance with subsection (b) of this section may be assumed without further analysis if the average annual concentration of gross beta particle activity is less than 50 pCi/l and if the average annual concentrations of tritium and strontium-90 are less than those listed in Table A of subsection (b)(2) of this section, provided that if both radionuclides are present the sum of their annual dose equivalents to bone marrow shall not exceed four millirem/year.

(i)-(iii) (No change.)

[(B) For the initial analysis required by subparagraph (A) of this paragraph data acquired within one year prior to June 24, 1977, may be substituted at the discretion of the department.]

(B)[(C)] After the initial analysis required by subparagraph (A) of this paragraph, suppliers of water shall monitor at least every four years following the procedure given in subparagraph (A) of this paragraph.

(C)[(D)] [By June 24, 1979,] The supplier of any community water system designated by the department as utilizing waters contaminated by effluents from nuclear facilities shall initiate quarterly monitoring for gross beta particle and iodine-131 radioactivity and annual monitoring for strontium-90 and tritium.

(i)-(iv) (No change.)

(D)[(E)] If the average annual maximum contaminant level for man-made radioactivity set forth in subsection (b) of this section is exceeded, the operator of a community water system shall give notice to the department and to the public as required by **§337.3(8)** [§337.3(7)] of this title (relating to Standards of Chemical [and Radiological] Quality). Monitoring at monthly intervals shall be continued until the concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption, or enforcement action shall become effective.

§337.12. Approved Laboratory.

(a) All samples for chemical, radiological, or bacteriological analysis must be submitted to a laboratory approved by the department, with the exception of turbidity and any control tests such as chlorine residual, alkalinity, and pH which are not used to determine compliance with these standards. Such control tests may be run in the plant laboratory. [Methods of analysis shall be as specified in §141.21(a) (microbiological), §141.22(A) (turbidity), §141.23 (f) (inorganic), §141.24(e) and (f) (organics), and §141.25 (radionuclides) of the EPA national interim primary drinking water regulations, *Federal Register*, Wednesday, December 24, 1975, Part IV, and Friday, July 9, 1976, Part II (radionuclides), or by any alternative analytical technique as specified by the state and approved by the administrator under §141.27 of the EPA regulations.]

(b) To be approved by the department to perform microbiological analyses, a laboratory shall be certified in accordance with the requirements of the U.S. Environmental Protection Agency Manual for the Certification of Laboratories Analyzing Drinking Water, Chapter V, Microbiology, which is herein adopted by reference. Copies are indexed and filed in the Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas, and are available for public inspection during regular business hours.

(c) Methods of analysis shall be as specified in §141.21(a) (microbiological), §141.22(a) (turbidity), §141.23(f) (inorganics), §141.24(e) and (f) (organics), and §141.25 (radionuclides) of the EPA national interim primary drinking water regulations, *Federal Register*, Wednesday, December 24, 1975, Part IV and Friday, July 9, 1976, Part II (radionuclides) or by any alternative analytical technique as specified by the state and approved by the administrator under §141.27 of the EPA regulations.

(d)[(b)] The department [of Health] adopts by reference the federal regulations referred to in subsection (c) [(a)] of this section. Sections 141.21(a), 141.22(a), 141.23 (f), 141.24(e) and (f), and 141.27 are in the *Federal Register*, Part IV, Wednesday, December 24, 1975, and §141.25 is in the *Federal Register*, Part II, Friday, July 9, 1976.

§337.13. Record Keeping **and Reporting** Required of Water Systems. Any owner or operator at a public water system subject to the provisions of this chapter shall retain on the water system premises or at a convenient location near the premises the following records:

(1)-(4) (No change.)

(5) Any owner or operator of a public water system subject to the provisions of this chapter is required to report to the state the results of any test, measurement, or analysis required to be made by these standards within **10**[40] days following such test, measurement, or analysis.

§337.17. Control of Trihalomethanes in Drinking Water.

(a) (No change.)

[(b) The maximum contaminant level for total trihalomethanes established in subsection (c) of this section shall take effect on November 29, 1981, for all community water systems serving 75,000 or more individuals and shall take effect on November 29, 1983, for those community water systems serving 10,000 to 74,999 individuals.]

(b)[(c)] The maximum contaminant level **(MCL)** for total trihalomethanes shall be 0.10 milligrams/liter. The MCL shall [not] apply **only** to those systems which **serve a population of** [supply less than] 10,000 **or more** individuals.

(c)[(d)] Sampling and analytical requirements for total trihalomethanes.

[(1) Initial analyses for determining total trihalomethanes shall begin not later than November 29, 1980, for community water systems serving 75,000 or more individuals. Initial analyses for determining total trihalomethanes shall begin not later than November 29, 1982, for those systems serving between 10,000 and 74,999 individuals.]

(1)[(2)] For the purpose of this section, the minimum number of samples required to be taken shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer shall be considered as one treatment plant for determining the minimum number samples. All samples taken within one sampling period shall be collected within a 24-hour period.

(2)[(3)] For all community water systems utilizing surface water sources in whole or in part, and for all water systems utilizing only ground water sources that have not been determined to qualify for the monitoring requirements of paragraph (4) [(5)] of this subsection, analyses for total trihalomethanes shall be performed on at least four samples of water per quarter from each treatment plant used by the system. At least 25% of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining 75% shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water, and different treatment methods employed. The results of all analyses per quarter shall be arithmetically averaged and reported to the department within 30 days of the system's receipt of such results. All samples collected shall be used in computing the average, unless the analytical results are invalidated for technical reasons.

(3)[(4)] Upon the written request of a community water system, the monitoring frequency required by paragraph (2) [(3)] of this subsection may be reduced by the department to a minimum of one sample analyzed for TTHMs per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system, upon a written determination by the department that the data from at least one year of monitoring in accordance with paragraph (2) [(3)] of this subsection and local conditions demonstrate that total trihalomethane concentrations will be consistently below the maximum contaminant level.

(A) If at any time during which the reduced monitoring frequency prescribed under this subsection applies, the results from any analysis exceed 0.10 milligrams/liter of TTHMs and such results are confirmed by at least one check sample taken promptly after such results are obtained, or if the system makes any significant change to its source of water or treatment program, the system shall immediately begin monitoring in accordance with the requirements of paragraph (2) [(3)] of this subsection.

(B) If a system is required to begin monitoring in accordance with paragraph (2) [(3)] of this subsection, such monitoring shall continue for at least one year before a reduction in monitoring frequency may be considered.

(4)[(5)] Upon the written request to the department, a community water system utilizing only ground water sources may seek to have the monitoring frequency reduced to a minimum of one sample for maximum TTHM potential per year taken at a point in the distribution system reflecting maximum residence time of the water in the system. The system shall submit to the state the results of at least one sample analyzed for maximum TTHM potential taken at a point in the distribution system reflecting the maximum residence time of the water in the system. The system's monitoring frequency may only be reduced upon a written determination by the department that, based upon the data submitted by the system, the system has a maximum TTHM potential of less than 0.10 milligrams/liter and that, based upon an assessment of the local conditions of the system, the system is not likely to approach or exceed the maximum contaminant level for TTHMs. The results of all analyses shall be reported to the department within 30 days of the system's receipt of such results. All samples collected shall be used for determining whether the system must comply with the monitoring requirements of paragraph (2) [(3)] of this subsection, unless the analytical results are invalidated for technical reasons.

(A) If at any time during which the reduced monitoring frequency prescribed under this subsection is in effect, the result from any analysis taken by the system for the maximum TTHM potential is equal to or greater than 0.10 milligrams/liter, and such results are confirmed by at least one check sample taken promptly after such results are received, the system shall begin immediately to monitor in accordance with the requirements of paragraph (2) [(3)] of this subsection.

(B) If it becomes necessary to begin monitoring in accordance with paragraph (2) [(3)] of this subsection, such monitoring shall continue for at least one year before the monitoring frequency may be reduced.

(C) In the event of any significant change to the system's raw water or treatment program, the system shall immediately analyze an additional sample from maximum TTHM potential taken at a point in the distribution system reflecting the maximum residence time of the water in the system for the purpose of determining whether the system must comply with the monitoring requirement of paragraph (2) [(3)] of this subsection.

(5)[(6)] Compliance with the MCL of 0.10 milligrams/liter for total trihalomethanes shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in paragraph (2) [(3)] of this subsection. If the average of samples covering any 12-month period exceeds the maximum contaminant level, the supplier of water shall report to the department within 30 days and notify the public as required under §337.3 (8) [§337.3(h)] of this title (relating to Standards of Chemical [and Radiological] Quality). Monitoring after public notification shall be a frequency designated by the department and shall continue until a monitoring schedule as a condition of a variance, exemption, or enforcement action shall become effective.

(6)[(7)] Before a community water system makes any significant modification to its existing treatment process for the purpose of achieving compliance with this subsection, the system must submit and obtain department approval of a detailed plan setting forth its proposed modifications and those safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by such system will not be adversely affected by such modifications.

(7)[(8)] All analyses for determining compliance with the provisions of this subsection shall be conducted in accordance with the procedures required by the United States Environmental Protection Agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 1, 1985.

TRD-856995 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption.
October 19, 1985
For further information, please call (512) 458-7533.

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★25 TAC §337.18

The new section is proposed under Texas Civil Statutes, Article 4414c, §2, which authorize the Texas Board of Health to charge fees to persons who receive public health services from the department, and Article 4477-1, §23, which authorizes the Texas Board of Health to adopt rules covering drinking water and water systems.

§337.18. Fees for Services to Drinking Water Systems.

(a) Purpose and scope.

(1) The purpose of this section is to establish fees for services provided by the department to drinking water systems.

(2) The scope of this section covers fees for services such as analyzing drinking water for chemical content, testing for bacteriological quality, inspecting public water systems, reviewing plans for new systems and major improvements to existing systems, and providing technical assistance as required.

(b) Services to public water systems.

(1) The services which are covered under this subsection do not cover bacteriological testing. Provisions covering bacteriological testing are covered in subsection (c) of this section.

(2) The department will provide services to public water systems, as follows:

(A) analyze drinking water for chemical content;

(B) inspect public water systems;

(C) review plans for new systems and major improvements to existing systems; and

(D) provide technical assistance as needed.

(3) The fees which the department will charge for services provided to community water systems under this subsection will be according to the following schedule:

Number of Connections*	Fee
1-49	$ 50
50-199	100
200-499	250
500-1999	500
2000-4999	1,000
5000-9999	1,500
10,000-29,999	2,000
30,000-99,999	3,000
100,000-199,999	4,000
200,000 and greater	5,000

*number of connections will be determined from data collected from the latest sanitary survey report.

(4) New public water systems will not be assessed a fee for services until water is supplied to the first connection.

(5) The department will charge a fee of $25 for services provided under this subsection to noncommunity water systems.

(6) All fees are due by January 1 of each year, shall be paid by check or money order, and shall be made payable to the Texas Department of Health.

(c) Services concerning bacteriological testing.

(1) This subsection covers fees for services for bacteriological testing provided by the department to public water systems and individual home water supplies (i.e., a well, spring, or stream serving a person's home or residence; or any system that is not a public water system).

(2) The department will charge a fee of $5.00 per sample for bacteriological testing.

(3) The fee shall be paid at the time the sample is submitted for testing or the department may bill the service recipient on a monthly basis.

(4) The fee shall be paid by check or money order and shall be made payable to the Texas Department of Health. Cash will be accepted for payment when the fee is paid at the time the sample is submitted for testing.

(5) Nonprofit laboratories approved by the department to perform bacteriological testing shall perform the test and may collect and retain the fees locally. The contracts between local health departments and the department may require that the local health department reimburse the department for supplies, reagents, and personnel time contributed by the department to this service. Parent organizations of local approved laboratories may be exempted from fees.

(d) Failure to make payments as required under subsection (b) or (c) of this section will subject the violator to the penalty provisions of Texas Civil Statutes, Article 4477-1.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 1, 1985.

TRD-856994 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption:
October 19, 1985

For further information, please call (512) 458-7533.

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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 403. Other Agencies and the Public

Subchapter P. Public Responsibility Committees

★25 TAC §§403.442-403.444, 403.448, 403.453

The Texas Department of Mental Health and Mental Retardation proposes amendments to §§403.442-403.444, 403.448, and 403.453, concerning public responsibility committees.

The amendment of §403.442, concerning application, would delete unnecessary qualifying language.

The amendment in §403.443, concerning definitions, would likewise delete unnecessary language, would add the definition of interdisciplinary team to the rule consistent with the passage of Senate Bill 1294, 69th Texas Legislature, 1985, and would add to those defined as having legal capacity to consent to disclosure of client-identifying information minors at least 16 but not yet 18 receiving voluntary mental health service who have not been adjudicated incompetent.

Also consistent with Senate Bill 1294, participation on the client's interdisciplinary team has been added to §403.444, relating to functions of the public responsibility committee.

Reference to department rules has been updated in §403.448, relating to investigatory responsibilities, and it is clarified that for purposes of accessing information in a mental health and alcohol and drug abuse client's record relevant to a complaint, public responsibility committee members are conducting an evaluation of the client protection component of service delivery and as such may access such information without the client's consent.

References to department rules have also been updated in §403.453, relating to references.

Sue Dillard, Office of Standards and Quality Assurance director, has determined that there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules as proposed.

Ms. Dillard also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules is rules that are consistent with state and federal law and that are up to date. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, TDMHMR, P.O. Box 12668, Austin, Texas 78711, within 30 days of publication.

The amendments are proposed under Texas Civil Statutes, Article 5547-202, §2.11(b), which provide the commissioner with the authority to promulgate rules subject to the basic and general policies of the Texas Board of Mental Health and Mental Retardation.

§403.442. Application. These sections apply to all facilities of the Texas Department of Mental Health and Mental Retardation and community mental health and mental retardation centers [established pursuant to Texas Civil Statutes, Article 5547-203].

§403.443. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

Board—The board of trustees appointed to govern a community [center for]

mental health and mental retardation **center** [services].

Center—A community center for mental health and mental retardation **center** [services] established pursuant to Texas Civil Statutes, Article 5547-203.

Facility—Any hospital, state school for the mentally retarded, **state center,** [human development center, research institute,] or other institution of the Texas Department of Mental Health and Mental Retardation and its respective outreach programs, or any organizational entity that may be hereafter made a part of the department.

Interdisciplinary team—A group of professionals and paraprofessionals who assess the client's treatment, training, and habilitation needs and make recommendations for services.

Legally adequate consent—Consent given by a person or his legally authorized representative when each of the following conditions has been met:

(A) Legal capacity—The person the consent is 18 years of age or older and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law; **is at least 16 years of age but under 18 years of age receiving voluntary mental health services and has not be adjudicated incompetent to manage his personal affairs by an appropriate court of law;** [or the person giving the consent] is the parent of a client under 18 years of age who is not and has not been married or has not had his disabilities of minority removed for general purposes; or [the person giving consent] is the guardian who, under court order, has been appointed guardian of the person of the client.

(B)-(C) (No change.)

§403.444. Functions of the PRC.

(a) The PRC is an independent, impartial third-party mechanism whose functions shall include, but are not limited to, the following:

(1)-(2) (No change.)

(3) ensuring that clients and, when appropriate, their families, are informed of their rights and the means of protecting those rights; [and]

(4) submitting instances of abuse or denial of rights to the appropriate authorities for action; **and**

(5) participating in the client's interdisciplinary team as the PRC deems appropriate.

(b) (No change.)

§403.448. Investigatory Responsibilities. Each facility or center PRC shall receive, investigate, and report complaints made to it by, or on behalf of, clients and shall make recommendations to appropriate line authorities.

(1) (No change.)

(2) Investigation of complaints. In investigating an instance of denial of client rights, the PRC shall initiate an investigation or inquiry within 10 calendar days of receipt of a complaint. In investigating a report of alleged client abuse or neglect, the PRC shall immediately contact the head of the facility or center, whose responsibility it is to ensure that the client abuse investigating authority initiates an investigation. At facilities, the superintendent or director is responsible for reporting results of client abuse investigations to the PRC in accordance with Subchapter O of Chapter 405 of this title (relating to Client Abuse and Neglect **in TDMHMR Facilities**).

(A)-(B) (No change.)

(C) Authority to inspect records. When investigating complaints of abuse or denial of rights, the PRC shall have the authority to inspect records contingent upon:

(i) (No change.)

(ii) whether the client has a diagnosis of mental illness. The PRC shall have access to the facility or center records relating to the treatment of the mentally ill person only under the provision of Texas Civil Statutues, Articles 5547-87 and 5561 (h), and **§403.297** [§405.288] of this title (relating to **When Consent for Disclosure Is Not Required: Clients Other than Alcohol and Drug Abuse Clients** [Rights of Patients of Mental Health Facilities as to Disclosure of Information]), **and §403.298 of this title (relating to When Consent for Disclosure Is Not Required: Alcohol and Drug Abuse Clients). Investigations by the PRC are considered bonafide evaluations of the client rights protection component of facility and center programs.**

(D) (No change.)

(3) (No change.)

§403.453. References. Reference is made to the following statutes and rules of the department.

(1) Chapter 405 of this title, relating to Client (Patient) Care. (See especially Subchapter O, relating to Client Abuse and Neglect **in TDMHMR Facilities.**)

(2)-(7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857110 Gary E. Miller
Commissioner
Texas Department of
Mental Health and
Mental Retardation

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 465-4670.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 1. Executive Administration

Fee Schedule

★31 TAC §1.91

The General Land Office proposes the both the repeal of and new §1.91, concerning fees. New §1.91 changes the format of the fee schedule to make its contents both clearer and easier to amend. Additionally, it revises geophysical fees, adds fees for surface damages, and increases the fee for recording patents and deeds of acquittance.

June Middlebrooks, Research and Fiscal Management deputy commissioner, has determined that for the first five-year period the rule will be in effect there will be fiscal implications as a result of enforcing or administering the rule. The anticipated effect on state government is an estimated increase of revenue of $269,800 each year in 1985-1989. The anticipated effect on local government is an estimated increase in revenue of $480 each year in 1985-1989. The anticipated effect on small businesses is the same as that on large businesses. There will be no fiscal implications as a result of the repeal.

Ms. Middlebrooks also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is that uplands damage fees will serve to protect and preserve state-owned lands. The geophysical fees and damage fees on bays and other tideland areas and the Gulf of Mexico will make the state's geophysical program more self-sufficient. In addition, money collected from surface damages will be used for conservation, reclamation, or construction of permanent improvements on permanent school fund lands. The public benefit from the proposed repeal of the existing rule is that it allows the promulgation of the new proposed rule. There is no anticipated economic cost to individuals as a result of the repeal. The anticipated economic cost to individuals who are required to comply with the rule as proposed will be an increase of $150 per day for geophysical fees for bays and other tideland areas and the Gulf of Mexico, and an increase of $100 per day for surface damage fees for bays and other tideland areas. The $50 per day fee for geophysical fees for uplands is dropped. The damage fees for uplands are new fees amounting to $850 per mile for seismic, dinosels, vibrations, and weight drop; $200 per day per crew for gravity meter, geochemical, and magnetomer; $900 per mile for a shooting crew; plus, $150 per hole for single shot reflection

or refraction shooting or a negotiated fee for velocity or experimental activities. There also will be a $3.00 increase for the recording of each patent or deed of acquittance.

Comments on the proposal may be submitted to Dan Miller, Deputy Commissioner for Legal Services, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701.

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the General Land Office, 1700 North Congress Avenue, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street Austin.)

The repeal is proposed under the Natural Resources Code, §31.064, which provides the commissioner of the General Land Office with the authority to set and collect reasonable fees for various services performed by the General Land Office; and 1985 Texas General Laws, Chapter 624, page 4727, *et seq.*, which authorizes the commissioner to establish and collect money for damages to the surface of land dedicated to the permanent school fund, and to set and collect fees as a condition of issuing geophysical permits.

§1.91. Fees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857136 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 475-6740.

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The new section is proposed under the Natural Resources Code, §31.064, which provides the commissioner of the General Land Office with the authority to set and collect reasonable fees for various services performed by the General Land Office, and 1985 Texas General Laws, Chapter 624, page 4727, *et seq.*, which authorizes the commissioner to establish and collect money for damages to the surface of land dedicated to the permanent school fund, and to set and collect fees as a condition of issuing geophysical permits.

§1.91. The commissioner is authorized and required to collect the following fees where applicable:

(1) Patents and deeds of acquittance.

(A) Patents $50;

(B) Deed of acquittance ..$50;

(C) Mineral patent.....$50;

(D) Registered mail $5.00;

(E) Recording .....$5.00.

(2) Certificate of facts.

(A) One file $50;

(B) Each additional file ..$10;

(C) Spanish document ...$50.

(3) Certificate of classification.

(A) One file $15;

(B) Each additional file.$5.00.

(4) Maps and plats.

(A) Official maps.

(i) Cloth print.....$22;

(ii) Paper print.....$12.

(B) Other sketches and plats, white prints, per linear foot $2.00;

(C) Preparation of working sketches.

(i) Per hour.....$10;

(ii) Minimum fee $40;

(D) Mailing tubes .....$1.00.

(5) Photostatic copies of documents.

(A) Pages larger than 8½ by 14 inches, per page $5.00

(B) Patent $5.00

(C) Deed of acquittance $5.00

(D) Maps, plats, and working sketches

(i) 12 by 10 inches ...$3.00;

(ii) 12 by 15 inches...$4.00;

(iii) 12 by 20 inches ..$5.00.

(E) Other pages, documents, or records, per page .....$2.50.

(6) Spanish translations.

(A) Per word .....$ .15;

(B) Minimum fee .....$10.

(7) Records research.

(A) Geneological search, per name $2.00;

(B) Other records research.

(i) Per hour.....$15;

(ii) Minimum fee ....$7.50.

(8) Publications.

(A) Vacancy listing $40;

(B) Abstract volume ..$12.50;

(C) Abstract volume supplement $10;

(D) Submerged lease data.

(i) Annual subscription rate $300;

(ii) Monthly rate $25;

(iii) Single copy, subscriber $37.50;

(iv) Single copy, nonsubscriber.....$75.

(E) Energy information service, per year .....$180.

(F) Notice for School Land Board bids and bid tabulation (effective November 1, 1985), per year .....$50.

(9) Geophysical fees.

(A) Bays and other tideland areas and the Gulf of Mexico—fees for a minimum of 10 days of work will be charged. Payment of the exploration inspection fee and of the geophysical fee for all 10 days plus the filing fee is due at the time the application is filed. The maximum permit term is 30 days. See paragraph (11) of this section for the filing fee. Damage fees will also be charged as provided for in paragraph (10) of this section.

(i) Unleased tracts.

(I) Exploration inspection fee, per day $100;

(II) Geophysical fee, per day .....$200.

(ii) Leased tracts: exploration, inspection fee, per day $100

(B) Uplands (State fee and Relinquishment Act tracts)—there is no geophysical or inspection fee for uplands tracts. An exploration permit must be obtained, however, and the filing fee, listed in paragraph (11) of this section, must be submitted with the application. Surface damage fees will also be charged for operations on state fees tracts; amounts are listed in paragraph (10) of this section.

(10) Surface damage fees.

(A) Bays and other tideland areas.

(i) Unleased tracts, per day $100;

(ii) Leased tracts, per day .....$100.

(B) Uplands, unleased and leased state fee tracts.

(i) Seismic, dioneis, vibrations and weight drop, per mile $850;

(ii) Gravity meter, geochemical, magnetometer, per crew per day $200

(iii) Each shooting crew, per mile.....$900;

(I) Plus for single shot reflection or refraction shooting, per hole.....$150;

(II) Plus for velocity or experimental activities ..... negotiable.

(11) Other filing fees.

(A) Mineral leases, assignments, and releases $25;

(B) Surface leases, assignments, and releases $10;

(C) Prospect permits $10;

(D) Geophysical exploration permit.....$100;

(E) Original field notes...$25;

(F) Any other instrument required by law to be filed in the General Land Office, where no filing fee is otherwise specified .....$25.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857135 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 475-6740.

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Unitization of State Lands

The School Land Board proposes the repeal of §§153.11-153.14 and new §§153.11-153.15, concerning the unitization of state lands. The proposed new sections revise the existing format of the rules to make them clearer, and the procedure is revised so that it is more efficient and streamlined.

John Hall, Resource Management deputy commissioner, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules or as a result of the repeal. The cost of compliance with the repeal and new rules will be the same for small and large businesses. The cost per employee and cost per hour of labor also will be the same.

Mr. Hall also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules is that the procedure and the standards for filing and approving pooling agreements with the School Land Board will be more clearly stated, and the public will be better informed of the requirements. Unitization proposals will be more efficiently presented and obtained as result of the proposed rules. The public benefit as a result of the repeal of the existing rules is that it allows the promulgation of the new proposed rules. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed or as a result of the repeal.

Comments on the proposal may be submitted to Dan Miller, Deputy Commissioner, Legal Services, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701

★31 TAC §§153.11-153.14

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the School Land Board, 1700 North Congress Avenue, Room 835, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Natural Resources Code, §32.062, which provides the School Land Board with the authority to adopt rules which are not inconsistent with law.

§153.11. Unitization Agreements.
§153.12. General Requirements.
§153.13. Pooling Committee.
§153.14. Contents of Agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857138 Garry Mauro
Commissioner
School Land Board

Earliest possible date of adoption:
August 13, 1985
For further information, please call (512) 475-6740.

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★31 TAC §§153.11-153.15

The new sections are proposed under the Natural Resources Code, §32.062, which provides the School Land Board with the authority to adopt rules which are not inconsistent with law.

§153.11. Procedure for Pooling of the State's Royalty Interests in Oil and Gas.

(a) A completed pooling application should be submitted to the commissioner of the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701, attention: Chairman, Oil and Gas Pooling Committee. An application form can be obtained upon request.

(1) The applicant should enclose the necessary plats as requested in the pooling application, and Railroad Commssion Forms (W-1, W-2, or G-1, as applicable).

(2) The applicant must submit evidence that the proposed pooling will be in the best interest of the state, such as:

(A) geological data, i.e., structural maps, isopach maps, cross-sections, productive limits;

(B) information on wells drilled in the general area of the proposed unit, and current production rates of offset wells;

(C) geophysical maps;

(D) portions of electrical and/or geophysical logs;

(E) any other pertinent evidence.

(b) The pooling application should be submitted no less than one week before the regular meeting of the Pooling Committee. The Pooling Committee meets on the first and third Wednesday of each month.

(c) A personal appearance before the Pooling Committee is not required of the applicant or his representative; however, by timely appointment either may appear and be heard if a personal appearance is desired.

(d) The Pooling Committee shall consist of representatives from the General Land Office, the governor's office and the attorney general's office.

(e) In the interest of time, an original and at least one copy of the fully executed pooling agreement may be submitted with the pooling application. The General Land Office has a form pooling agreement which is available upon request.

§153.12. Authorization to Operate Areas as Units.

(a) The commissioner of the General Land Office may execute pooling or unitization agreements, or ratifications of such agreements, for the production of oil or gas or both covering the royalty interests reserved to the state by law, contract of sale, or under any oil and gas lease legally executed by an official, board, agent, agency, or authority of the state.

(b) The commissioner must find that the agreement is in the best interest of the state.

§153.13. Approval of Unit Agreements.

(a) If the agreement covers land belonging to the permanent school fund or the asylum funds in riverbeds, inland lakes, and channels, or in an area within tidewater limits, it must be approved by the School Land Board.

(b) If the agreement covers the state's royalty interest in land not covered by subsection (a) of this section, it must be approved by the appropriate board, official, agency or authority of the state who is authorized to lease or to approve a lease of the land for oil and gas.

(c) If the agreement includes land leased for oil and gas under the Relinquishment Act (Natural Resources Code, Chapter 52, Subchapter F), it must be executed by the owner of the soil and approved by the School Land Board. The owner of the soil will be deemed to have executed the unit agreement if:

(1) the oil and gas lease contains language authorizing pooling consistent with the Natural Resources Code, §§52.151-52.153, inclusive;

(2) the owner of the soil expressly agrees that the inclusion of such language in the lease satisfies the execution requirement of the Code, §52.152; and

(3) such language is approved by the commissioner of General Land Office.

§153.14. Agreement Provisions. The pooling or unitization agreement shall provide:

(1) a description of the pooled lands and leases, including the state mineral file numbers of all state leases to be included within the unit;

(2) the mineral pooled (oil or gas or both);

(3) that drilling, reworking, or other operations on the unitized area with respect to the pooled mineral shall be considered for all purposes as though the same were on each separate tract in the unit;

(4) that production of the pooled mineral allocated to each tract shall be deemed to have been produced from each such tract in the unit;

(5) the manner in which unit production is to be allocated to each such tract (surface acres or acre feet of sand);

(6) the effective date and term of the unit;

(7) such other provisions which the appropriate board, official, agent, agency, or authority of the state may consider necessary.

§153.15. Dissolution or Termination of Unit.

(a) If a unit previously approved by the School Land Board or other appropriate board is dissolved or terminated for any reason, the applicant who sought the approval shall notify the commissioner of the General Land Office that the unit no longer exists.

(b) The notice required under subsection (a) of this section shall contain a description of the unit and list the state lease mineral file numbers sufficient to clearly identify the state properties within the unit.

(c) The notice required by this section shall be submitted no later than 30 days after the termination or dissolution of the unit.

(d) Any unit agreement approved by the School Land Board which is not fully executed and filed with the commissioner of the General Land Office within 90 days after approval shall automatically terminate. The applicant may resubmit the unit application to the pooling committee in accordance with §153.11 of this title (relating to Procedure for Pooling of the State's Royalty Interests in Oil and Gas).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857137 Garry Mauro
Chairman
School Land Board

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 475-6740.

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Operations on Permanent School Fund Land

★31 TAC §153.37

The School Land Board proposes an amendment to §153.37, concerning the recommencement of the primary term following a suspension of an oil and gas lease. The board is proposing to delete the provision that 90 days shall elapse after the board enters an order in its minutes stating that the cause for suspension has ceased to exist, before the oil and gas lease shall again become operative. Under the rule as written, during the 90-day period after the board's order has been entered and before the primary lease term commenced again, the oil and gas lease remains in status quo during which time the only obligation or condition which remains in force is the obligation to pay delay rentals. The proposed change will make this provision consistent with the force majeure clause of the lease.

Bill Elder, Planning Division director, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Dan Miller, legal services deputy commissioner, has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is to make the suspension comport with the force majeure language in the lease and to enable operations under the lease to recommence as soon as possible after the School Land Board enters its order terminating the suspension of the lease.

Comments on the rule may be submitted to Dan Miller, Deputy Commissioner, Legal Services, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701.

The amendment is proposed under the Natural Resources Code, §52.1301(c) and (d), which sets forth the provisions for the granting of suspensions by the School Land Board, and the Natural Resources Code, §32.062, which provides the School Land Board with the authority to adopt rules which are not inconsistent with law.

§153.37. Suspension of Oil and Gas Leases (Except Leases Under the Natural Resources Code, Chapter 52, Subchapter F).

(a)-(b) (No change.)

(C) Denial of access. If a lessee is denied access to the lease property or is denied a permit to drill on or produce from the leased premises by any agency or authority of the United States, and the lessee has made a bona fide attempt to obtain access or a permit, the lease will be suspended under the following terms:

(1) (No change.)

(2) The primary term will commence again [90 days] after the School Land Board enters an order stating the cause for suspension has creased to exist.

(3) (No change.)

(d)-(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857139 Garry Mauro
Commissioner
School Land Office

Earliest possible date of adoption:
August 13, 1985
For further information, please call
(512) 475-6740.

★ ★ ★

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter Q. Franchise Tax

★34 TAC §3.393

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Comptroller of Public Accounts, LBJ Building, 111 East 17th Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.393, concerning special reporting procedures. This section is repealed so that a substantially revised section dealing with the same subject matter may be adopted.

Billy Hamilton, revenue estimating director, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government as a result of the repeal. This repeal is promulgated under the Tax Code, Title 2, and no statement of fiscal implications is required.

Mr. Hamilton also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is provision of new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to D. Carolyn Busch, Director, Tax Administration, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the franchise tax.

§3.393. Special Reporting Procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 7, 1985.

TRD-857142 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 463-4606.

★ ★ ★

The Comptroller of Public Accounts proposes new §3.393, concerning special reporting procedures, to replace existing §3.393 that is being repealed. The new section eliminates the requirement that a corporation be in good standing at the time its petition for special reporting is granted; adds a provision stating that if additional information is required to make a determination on the granting of a petition it must submitted within 30 days after the due date of the report; defines the criteria used in granting or denying special reporting; specifies that a corporation, once granted special reporting, will be allowed to report on the single factor receipts fraction, but will not thereafter be allowed to use a special reporting method, unless a substantial change in the nature of its business occurs and a new petition is timely submitted; and changes the due date for a petition to use a special reporting method on an annual report to March 1 in the year in which the annual report is due, because of a change made by the legislature during the 1984 special session. The due date for filing and payment of annual reports has been changed from June 15 to March 15; the new section also rewords certain sections for clarity and to conform with the recodification of the franchise tax statutes and reformats the section to conform to *Texas Register* filing requirements.

Billy Hamilton, director of revenue estimating, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. This rule is promulgated under of the Tax Code, Title 2, and no statement of the fiscal implications for small businesses is required.

Mr. Hamilton also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is the provision of new information regarding the public's tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to D. Carolyn Busch, Director, Tax Administration, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the franchise tax.

§3.393. Special Reporting Procedures.

(a) Petition for special reporting.

(1) Permission to employ a special reporting method will not be granted unless a written petition is timely filed. The petition may be submitted in letter form, must specify the method of special reporting desired, and should be addressed to the Comptroller of Public Accounts, Austin, Texas 78774, Attention: Tax Administration Division, Tax Policy Section. The petition for special reporting must incorporate or have attached schedules, statements, or other documentation reflecting the following information:

(A) a brief description of the nature of the corporation's primary business activities conducted within and, if substantially different, without the State of Texas, including indication of the number of states in which business activities are conducted;

(B) a brief statement of the reasons the allocation and apportionment provisions of the Texas Tax Code, §171.106, do not fairly represent the extent of the corporation's business done in Texas;

(C) a schedule or schedules showing, as of the corporation's accounting year end date in the previous calendar year (or date upon which tax is based for corporations filing an initial report), the approximate percentage relationship between:

(i) gross receipts from business done in Texas to total gross receipts from its entire business;

(ii) payroll expenses paid for personal services performed in Texas to total payroll expenses; and

(iii) the average value of the corporation's property in Texas to the average value of the corporation's property everywhere;

(D) any additional information the comptroller deems necessary to make a determination on the petition;

(2) a petition to employ a special reporting method in the initial franchise tax report must be filed at least 15 days prior to the original due date of the report, and a petition to employ a special reporting method in an annual report must be filed no later than March 1 of the year in which the annual report is due. The postmark (or meter mark in the absence of a postmark) on the envelope in which the petition is received determines the date of filing. If the comptroller requires additional information in order to make a determination on the granting of a petition, the information must be submitted within 90 days after the due date of the franchise tax report. If the corporation does not timely submit the information, the petition will be considered withdrawn.

(3) A corporation which is granted permission to employ a special reporting method is not required to submit subsequent petitions to employ the identical method in subsequent annual reports. However, a new petition is required if a corporation desires to change from one method of special reporting to another method. A corporation granted special reporting may file a report using the single factor receipts fraction but use of the single factor receipts fraction automatically forfeits the privilege of using a special reporting method for subsequent reports unless a new petition is timely submitted and a substantial change in the nature of its business has occurred.

(4) The comptroller may revoke permission to employ a special reporting method if the corporation files reports not using the special reporting method granted. It is the responsibility of each corporation granted permission to employ a special reporting method to advise the comptroller at least 15 days prior to the due date of its next report of changes in its organizational structure or in the manner in which its primary business activities are conducted (*e.g.*, merger, consolidation, or other reorganization) which vary from the facts presented in its petition for a special method of reporting. Upon receipt thereof, the comptroller will advise the corporation whether, in light of such changes, a new petition for a special reporting method is required. Permission granted to one corporation may not be used for another corporation, nor does a corporation succeed to the permission by merger or consolidation.

(5) A special reporting method is not effective retroactively, and is granted only for a report or reports due subsequent to the filing date of the petition.

(6) Failure of a corporation to receive notification from the comptroller of the final determination on its petition does not relieve the corporation of responsibility to report and pay the tax on or before the due date, in accordance with the statutory formula contained in the Texas Tax Code, §171.106. If the final determination authorizes use of a special reporting method, the corporation will be notified to file an amended report.

(b) Criteria for granting special reporting methods.

(1) Separate accounting means the taxation as a separate entity of a distinctly identifiable segment of a corporation, which segment is located entirely within Texas and performs all of the corporation's business activities carried on in Texas. A corporation will not be granted separate accounting unless it demonstrates that the franchise tax due from the segment would be the same as that which would be due if the segment were a separately incorporated entity and that only separate accounting will fairly represent the corporation's business in Texas. The separately accounted for segment must, at a minimum, maintain a separate set of books and records of account, including financial statements, which reflect the business activities of the segment apart from that of the corporation, such as by making provision for overhead and all other proper charges. The corporation petitioning for separate accounting must also establish as a base amount of taxable capital the net worth at the time the petition is due of the segment to be separately accounted for. The net worth of the segment is its total assets less liabilities attributable to the segment's

operations. The corporation will be required to separately accumulate net earnings attributable to the segment's operations, allowing only a pro rata share of dividends declared by the corporation as a whole to be deducted from the segment's annual net earnings to the corporation's annual net earnings as a whole.

(2) The use of the three-factor or alternate two-factor formula, as described in section (c) of this section, is the usual method of special reporting granted by the comptroller. The three-factor or alternate two-factor formula will be granted by the comptroller if a corporation meets all requirements for special reporting set out in this section.

(3) The employment of any other method to allocate and apportion a corporation's capital will be permitted by the comptroller only in specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the special reporting methods authorized by the Texas Tax Code, §171.108, (1) and (2). The burden will be upon the petitioning corporation to prove that the statutory apportionment does not fairly represent the corporation's percentage of Texas business and that the proposed allocation method will equitably allocate its business to Texas.

(c) Three-factor or alternate two-factor formula. The comptroller may approve a three-factor formula which allocates a corporation's taxable capital to Texas by multiplying such capital by a fraction, the numerator of which is a gross receipts factor plus a payroll factor plus a property factor, and the denominator of which is three. However, if there is no payroll attributed to Texas, or if there is no property attributed to Texas, an alternate two-factor formula may be approved in which the numerator does not include a factor for the zero item, and the denominator of the fraction must be two. If neither payroll nor property is attributable to Texas, a three-factor or alternate two-factor formula as otherwise provided in this subsection may not be employed. The composition of each of the factors shall be determined as follows.

(1) The gross receipts factor is a fraction, the numerator of which is the corporation's gross receipts from its business done in Texas and the denominator of which is the corporation's total gross receipts from its entire business, both as prescribed in the Texas Tax Code, §171.103 and §171.105. In determining such gross receipts, no distinction shall be made between business income and nonbusiness income. Receipts of subsidiaries or other related corporations or business entities may not be included in the fraction.

(2) The payroll factor is a fraction, the numerator of which is the total amount of wages, salaries, or other type compensation paid by the corporation to its officers and employees for personal services in Texas during its accounting year, and the denominator of which is the total such compensation paid everywhere during the accounting year. Wages, salaries, or other compensation is paid for personal services in Texas if:

(A) the individual's service is performed entirely within Texas;

(B) the individual's service is performed both within and without Texas, but the service performed without the State of Texas is incidental to the service within Texas; or

(C) some of the service is performed in Texas and

(i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in Texas or

(ii) the base of operations or the place from which directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is within Texas. A corporation must include in this fraction the total compensation paid by the corporation to its officers and employees even though such individuals may also perform some services for the corporation's parent, subsidiaries, or other business entities. Compensation hereunder is not reduced by the amount thereof that is capitalized rather than expensed for book purposes.

(3) The property factor is a fraction, the numerator of which is the average value of the corporation's real property and tangible personal property owned or rented and used in Texas during the corporation's accounting year, and the denominator of which is the average value of all the corporation's real property and tangible personal property owned or rented and used everywhere during such period. Property owned is valued at its original cost; property rented is valued at eight times the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals. The average value of property is determined by averaging the values at the beginning and ending of the corporation's accounting year. However, the comptroller may require other methods of determining average value if reasonably required to reflect fairly the average value of the corporation's property.

(d) Schedules to accompany special reporting. Each franchise tax report employing the three-factor formula must be accompanied by a schedule in the format shown in Exhibit A, reflecting the exact figures used in arriving at the percentage of business in Texas. If the report is based on some other special reporting method, a schedule must be furnished showing the figures and other details used in arriving at the amount of tax reported by the corporation. The phrase "SPECIAL REPORTING" must appear above the corporate name on each report.

Exhibit A

SCHEDULE OF RECEIPTS, PROPERTY AND PAYROLL

Corporation Name _____

Taxpayer Number _____

Accounting Year Ending Date _____

(DO NOT SEPARATE FROM FRANCHISE REPORT)

The following schedule must be completed and attached to the Texas franchise tax report if the corporation is permitted to file the report using the three-factor formula or alternative two-factor formula. Each of the factors must be completed in accordance with Franchise Tax Rule No. 3.393. When authorized to use the alternate two-factor formula, complete only the two factors for which permission has been granted.

RECEIPTS	Texas	Everywhere	Percent
Sales - Less Allowance and Returns	$	$	
Net Capital Gains and Losses from Sale of Assets			
Interest			
Dividends			
Other Income			
Total Receipts	$	$	
PROPERTY			
Property, Cost, Beginning of Period	$	$	
Property, Cost, End of Period			
Total Cost	$	$	
Average Cost/Total Cost divided by 2	$	$	
Annual Rental Value of Property (Less Subrentals) Beginning of Period X 8	$	$	
Annual Rental Value of Property (Less Subrentals) End of Period X 8			
Total Rental Value	$	$	
Average Rental Value - Total Rental Value divided by 2	$	$	
Total Average Value of Prop.	$	$	
PAYROLL	$	$	
TOTAL PERCENT			
PERCENT OF BUSINESS IN TEXAS, DIVIDE TOTAL PERCENT BY 2 or 3, AS APPLICABLE			

(This form may be reproduced.)

INSTRUCTIONS

1. Receipts factor - enter percent (Texas/Everywhere x 100 = Percent) of Texas receipts to Receipts everywhere.
2. Property factor - enter percent of property in Texas to property everywhere.
3. Payroll factor - enter percent of payroll in Texas to payroll everywhere.
4. Carry out the calculation of the respective percentages to four decimal places (xx.xxxx%).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 7, 1985.

TRD-857141 Bob Bullock
Comptroller of
Public Accounts

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 463-4606.

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Part III. Teacher Retirement System of Texas

Chapter 25. Membership Credit

★34 TAC §25.21

The Teacher Retirement System of Texas proposes amendments to §25.21, concerning member compensation that is subject to retirement contributions and credit with the Teacher Retirement System (TRS) of Texas. The section incorporates the statutory changes enacted by the 69th Legislature, 1985, that primarily permit retirement salary credit used in benefit calculations to include employee contributions to tax favored benefit plans for the first time.

Wayne Fickel, controller, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Mr. Fickel also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is that the rule will comply with the statute making certain additional forms of compensation creditable under the TRS. The statute allows members of the retirement system to take advantage of federal tax breaks without sacrificing retirement credit. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity, Austin, Texas 78701.

The amendments are proposed under the Revised Statutes, Title 110B, §35.102, which provide the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, administering the funds of the retirement system and conducting its business.

§25.21. Compensation Subject to Deposit and Credit.

(a)-(b) (No change.)

(c) The following types of monetary compensation are to be included in annual compensation:

(1) amounts deducted from regular pay for the state-deferred compensation program, [or] for a tax-sheltered annuity, **or for a deferred compensation arrangement qualifying under the U.S. Internal Revenue Code, §401(k);**

(2)-(3) (No change.)

(4) **career ladder payments of money authorized by the Texas Education Code, §16.057,** [payments for supervising student teachers];

(5) delayed payments of lump sum amounts which by law or contract should have been paid at fixed intervals and which otherwise meet the requirements of subsection (b) of this section; **and**

(6) amounts withheld from regular pay under a cafeteria plan as provided by §25.22 of this title (relating to Contributions to Cafeteria Plans and Deferred Compensation).

(d) The following are excluded from annual compensation:

(1)-(4) (No change.)

(5) bonuses, **except for career ladder payments authorized by the Texas Education Code, §16.057;**

(6) employer payments for fringe benefits, including direct cash payments in lieu of fringe benefits, except as provided in §25.22 of this title (relating to Contributions to Cafeteria Plans and Deferred Compensation) [cash payments, including those in a cafeteria plan, received at the member's option in lieu of a benefit excluded from federal income tax];

(7) payments, except as provided in subsections (c)(1), [and] (c)(2), **and (c)(6)** of this section, made to third parties for the benefit of a member;

(8)-(10) (No change.)

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857117 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 397-6400.

★ ★ ★

★34 TAC §25.22

The Teacher Retirement System of Texas (TRS) proposes new §25.22, concerning teacher retirement salary credit for employee contributions to deferred compensation and cafeteria plans through salary reduction agreements recognized by federal law. The new section implements changes to the teacher retirement law adoped by the 69th Legislature, 1985. The new section provides retirement salary credit for contributions to these tax-favored plans if the contributions are obtained from voluntary salary reductions, the plan is available to all employees, and the benefit options are limited to those currently specified for cafeteria plans in federal law. The new section makes a distinction between employee contributions which are creditable and employer contributions which are not.

Wayne Fickel, TRS controller, has determined that for the first five years the rule is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Mr. Fickel also has determined that for each year of the first five years the rule in effect the public benefit anticipated as a result of enforcing the rule is that employees covered by the Teacher Retirement System can take advantage of federal tax breaks on their compensation without losing retirement credit. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity, Austin, Texas 78701.

The new section is proposed under Texas Civil Statutes, Title 110B, §35.102, which provide the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, administering the funds of the retirement system, and conducting its business.

§25.22. Contributions to Cafeteria Plans and Deferred Compensation.

(a) In this section:

(1) "deferred compensation plan" means a plan qualifying under the United States Internal Revenue Code, §§401(k), 403(b), or 457; and

(2) "cafeteria plan" means a compensation plan in which employees are given a choice of cash or fringe benefits in a manner that qualifies under the United States Internal Revenue Code, §125.

(b) The contributions to a deferred compensation plan or cafeteria plan that are withheld from the salary and wages of an employee will be included in annual compensation if:

(1) the contributions were originally included in the employee's salary;

(2) the contributions are withheld from the employee's salary under a voluntary written salary reduction agreement;

(3) the benefit plan and each option in the plan, if options are offered, are available to all Teacher Retirement System (TRS) members employed; and

(4) with respect to contributions to a cafeteria plan, the benefit options in the plan are limited to one or more of the following:

(A) group health insurance;

(B) disability payments;

(C) health care reimbursements;

(D) group term life insurance;

(E) dependent care assistance;

(F) group legal services;

(G) a deferred compensation arrangement qualifying under §401(k).

(c) The following contributions to deferred compensation or cafeteria plans are not includable in annual compensation:

(1) mandatory deductions or withholdings from employee salaries;

(2) direct employer contributions as described in subsection (f) of this section;

(3) any contributions to a cafeteria plan if the plan contains options in addition to those listed in subsection (b)(4) of this section;

(4) any contribution to a deferred compensation or cafeteria plan if the plan or any options within the plan are not available to all TRS members employed by the employer;

(5) any contributions to a cafeteria plan if the plan offers employees not desiring benefits to receive cash in lieu of the employer's direct contributions to the plan as described in subsection (f) of this section;

(6) any contributions to a retirement plan in which the contributions are picked up by an employer; or

(7) any employee contributions made by salary reduction to a fringe benefit or deferred compensation plan that does not qualify under the United States Internal Revenue Code, §§125, 401(k), 401(b), or 457.

(d) To be considered an acceptable voluntary salary reduction agreement for the purposes of subsection (b)(2) of this section, the agreement must be in writing and each employee must have a bona fide option whether or not to sign it.

(e) A contribution as used in this section is either a direct contribution to a benefit program made by an employer or a contribution to a benefit program that is made by an employee through a voluntary salary reduction agreement. Nothing in this section should be interpreted to exclude amounts from annual compensation that are simply deductions from an employee's normal salary (without a salary reduction agreement) for payment to a benefit program, such as group insurance.

(f) Direct employer contributions are the payments made by the employer to an employee benefit program that were not obtained as a result of an employee's voluntary salary reduction agreement. The existence of direct employer contributions to deferred compensation or cafeteria plans does not in itself disqualify employee contributions to the same plan from being considered as annual compensation. However, direct employer contributions are not in themselves ever to be included in annual compensation. Further, if employees are given the option in a cafeteria plan of taking the direct employer contribution as cash, then no employee contributions to the plan are includable in annual compensation.

(g) Contributions from voluntary salary reduction agreements to deferred compensation plans that qualify under the United States Internal Revenue Code, §401 (k), and to cafeteria plans are includable in annual compensation beginning September 1, 1985. Employee contributions to tax sheltered annuities qualifying under the United States Internal Revenue Code, §403 (b), and to the state deferred compensation program have always been includable in annual compensation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857118 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 397-6400.

★ ★ ★

Compensation

★34 TAC §25.27

The Teacher Retirement System of Texas (TRS) proposes an amendment to §25.27, concerning contracts bought up by an employer. The legislature has changed the law so that terminal leave pay is no longer creditable. The amendment reflects the new law.

Wayne Fickel, controller, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Mr. Fickel also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is provision of a strict definition of compensation and provision of safeguards for the TRS. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity Street, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Title 110B, §35.102, which provide the Board of Trustees of the Teacher Retirement System of Texas with the authority to make rules regarding membership, administration of the funds, and transaction of business.

§25.27. Contracts Bought Up by Employer. Any member whose contract is bought up by his employer will receive credit for a year of service only if he renders at least 4½ months of service in the school year in which the contract is bought up. He shall make deposits for compensation received to the date of termination of his employment if he did not complete a creditable year of service. If he did complete a creditable year of service he shall make deposits and receive credit for all compensation received for that school year. The amount paid for future contracted services which are not actually rendered is not considered to be compensation as defined in the Teacher Retirement

Law, and no deposits or credit for service will be based on it. [Terminal leave pay under an established personnel policy is creditable and is not the same as buying up a contract.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857120 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 397-6400.

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★34 TAC §25.30

The Teacher Retirement System of Texas (TRS) proposes an amendment to §25.30, concerning exclusion of compensation from teacher retirement salary credit if it has been converted from noncreditable compensation in the years immediately before retirement. The section presumes such a conversion if noncreditable compensation is subsequently replaced by creditable compensation. The amendment exempts from this section any compensation recently made creditable in amendments to the teacher retirement law enacted by the 69th Legislature, 1985, with respect to employee contributions to cafeteria plans and deferred compensation plans.

Wayne Fickel, controller, has determined that for the first five years the rule is in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the rule.

Mr. Fickel also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is that recent statutory changes making employee contributions to cafeteria plans creditable in retirement benefit calculations will apply for future years to those who have already been contributing to cafeteria plans. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity Street, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Title 110B, §35.102, which provide the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, administering the funds of the retirement system, and conducting its business, and under Texas Civil Statutes, Title 110B, §35.110, which provide the Board of Trustees of the Teacher Retirement System with the authority to adopt rules to prevent conversion of noncreditable compensation to creditable compensation in benefit calculations.

§25.30. Conversion of Noncreditable Compensation to Salary.

(a)-(f) (No change.)

(g) amounts withheld from employees' salaries before September 1, 1985, under voluntary salary reduction agreements for cafeteria plans or deferred compensation qualifying under the United States Internal Revenue Code, §401(k), will be excluded from noncreditable compensation for the purposes of this section only.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857121 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 397-6400.

★ ★ ★

Joint Service with Employees Retirement System

★34 TAC §25.112

The Teacher Retirement System of Texas (TRS) proposes new §25.112, concerning Texas Research Institute for Mental Sciences (TRIMS) employees. The new section implements the transfer of retirement credit from the Employees Retirement System of Texas for former employees of the Texas Research Institute of Mental Sciences as required by the Texas Education Code, §75.503, enacted by the 69th Legislature, 1985. The new section specifies the employment dates required for those subject to the transfer, sets the effective date of the transfer, and provides for reversal of ineligible transfers.

Wayne Fickel, controller, has determined that for the first five years the rule is in effect there will be no fiscal implications to state or local governments or small businesses as a result of enforcing or administering the rule.

Mr. Fickel also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is the preservation of full retirement incentives within the Teacher Retirement System for former employees of the Texas Research Institute for Mental Sciences when the functions of that agency are assumed by the University of Texas. No economic cost to individuals who are required to comply with the rule is anticipated.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity Street, Austin, Texas 78701.

The new section is proposed under Texas Civil Statutes, Title 110B, §33.201(b), which provide the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for membership service credit; Texas Civil Statutes, Title 110B, §35.102, which provide the Board of Trustees with the authority to adopt rules for membership eligibility, the administration of funds of the retirement system, and the conduct of its business; and the Texas Education Code, §73.503(h), which gives the Board of Trustees of the Teacher Retirement System the authority to adopt procedures to prevent duplication of credit with the Employees Retirement System and the Teacher Retirement System.

§25.112. Texas Research Institute of Mental Sciences (TRIMS) Employees.

(a) Any person reported to the Employees Retirement System of Texas (ERS) as an employee of the Texas Research Institute for Mental Sciences during the months of May, June, July, or August 1985 will qualify for transfer of ERS credit to the Teacher Retirement System (TRS) under Senate Bill 1295, Acts of the 69th Legislature, 1985, if the person is subsequently employed by the University of Texas System or any of its components during the month of June, July, August, or September 1985 in a position eligible for TRS membership, provided they have not retired or withdrawn their membership accounts from ERS by August 31, 1985.

(b) The transfer of ERS credit to TRS for all eligible persons will be effective as of September 1, 1985, or the actual date of employment by the University of Texas in the month of September 1985, whichever is later.

(c) A person employed by the University of Texas in a position ineligible for membership in TRS is not eligible for this transfer of credit. A person who has an election of Optional Retirement Program (ORP) in effect on the effective date of transfer is in a position ineligible for membership in TRS. Any administration transfer of credit for those found to be ineligible is void and will be reversed. Persons transferring ERS credit under this section who apply for TRS retirement before January 31, 1986, will be required to provide a separate certificate by the University of Texas that the person was employed in a position eligible for TRS membership.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857122 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 397-6400.

★ ★ ★

Chapter 29. Benefits
Service Retirement

★34 TAC §29.14, §29.15

The Teacher Retirement System of Texas proposes amendments to §29.14 and §29.15, concerning eligibility for retirement at the end of May and withdrawal from service. Senate Bill 1093, 69th Legislature, 1985, provided a person could retire on May 31 if all work was completed by June 15. An employer is no longer required to pay all compensation by May 31. In addition a person revokes their retirement if he or she works in any position in a public school during the first month following the effective date of retirement or during the first two months is using the May31-June 15 rule discussed previously.

Wayne Fickel, controller, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules. The fiscal implications of the new rules were considered by the legislature.

Mr. Fickel also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules is that the May-June 15th retirement process will be easier for employers and employees. Other forms of employment after retirement were provided along with the one-month service break for the members. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity, Austin, Texas 78701.

The amendments are proposed under the Texas Civil Statutes, Title 110B, §35.102, which provide the Board of Trustees of the Teacher Retirement System with the authority to make rules regarding membership, administration of the funds and transaction of business.

§29.14. Eligibility for Retirement on the End of May. Any member who completes all service required by his or her contract for the full school year by 15th of June, terminates his or her employment in public education in Texas by the 15th of June, and satisfies all other requriements for retirement before the 31st of May shall be eligible for retirement on the last day of May. [All salary due for the entire term of employment shall be paid to the member and teacher requirement deposits reported by the end of May. Such member may continue to work in the same position under the provisions of the Texas Education Code, §3.37 (a)(2).] In other circumstances, the retirement shall be the last day of the month in which the member is last employed and satisfied all conditions for retirement. **No member who has accumulated 12 months of service in the final school year before retirement may use this rule to add compensation for any additional period of service to his annual compensation.**

§29.15. Withdrawal From Service. **A person who has retired may not be employed in any position in a public school during the first month following that person's effective date of retirement, or during the first two months following an effective date of retirement which uses Title 110B, §34.002(d), (this is the May 31-June 15 rules described in §19.14 of this title (relating to Eligibility for Retirement on the End of May)). Employment in any capacity revokes the retirement and requires a return of any benefits received under the original retirement.** [Except as provided in §29.14 of this title (relating to Eligibility for Retirement on the End of May), a member has not withdrawn §29.1 of this title (relating to Eligibility) until he or she terminates employment in a position otherwise eligible for membership at least one workday immediately following the member's proposed date of retirement.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857124 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 397-6400.

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Chapter 31. Employment After Retirement

★34 TAC §§31.2, 31.3, 31.7, 31.9

The Teacher Retirement System of Texas (TRS) proposes amendments to §§31.2, 31.3, 31.7, and 31.9, concerning circumstances under which retirees of the TRS may be employed in Texas public education without losing monthly retirement benefits. The proposed amendments comply with changes in Texas Civil Statutes, Title 110B, Subtitle D, enacted by Senate Bill 1093, 69th Legislature, 1985. The amendments integrate a new category of permissible employment, full-time for a five-month period, with existing categories of permissible employment, substituting, and part time employment. The amendments also incorporate a new requirement that retirees must not return to employment for at least one month after retirement.

Wayne Fickel, controller, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules.

Mr. Fickel also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules is that the new rules governing employment after retirement will allow public educational institutions to employ more retirees and will facilitate early retirement policies of educational institutions. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity Street, Austin, Texas 78701.

The amendments are proposed under Texas Civil Statutes, Title 110B, §35.102, which provide the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for the administration of the funds of the retirement system; and Texas Civil Statutes, Title 110B, §34.602, that authorize the Board of Trustees of the Teacher Retirement System to adopt rules governing the employment of a substitute and defining half-time basis.

§31.2. Forfeiture of Annuities. Members receiving service retirement annuities forfeit those annuities in any month in which they are employed by **a public educational institution covered by the Teacher Retirement System of Texas** [an agency included in State of Texas Retirement System which gave credit toward the retirement], except in the cases set forth in §31.3 of this title (relating to Permissible Substitute Employment), [and] §31.7 of this title (relating to Employment of Retired Persons) **on as much as half time** for employment after September 1, 1967, **and §31.12 of this title (relating to Employment Up to Five Months On as Much as Full Time). However, the exceptions provided in those sections do not apply to the statutory requirement that a person automatically revokes retirement if**

employed in any position in Texas public educational institutions in the month immediately following the person's official date of retirement (or in the two months immediately following the person's official date of retirement if the date of retirement has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement on the End of May)).

§31.3. Permissible Substitute Employment. Any person receiving a service retirement annuity may be employed in a month as a substitute in a public educational institution without affecting the annuity payment for that month, provided that the person's total substitute employment in Texas public education in the school year has not exceeded 120 days, that the person does not have other employment in Texas public education during the month, and that the pay for work as a substitute does not exceed the daily rate of substitute pay established by the employer. A person receiving a disability retirement annuity may be employed as a substitute in a month without affecting the annuity for that month subject to the same conditions as apply to service retirees except that the total substitute employment in the school year may not exceed 90 days. The exception described in this section is not available to persons who have elected the exception described in §31.12 of this title (relating to Employment Up to Five Months on as Much as Full Time). The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement on the End of May). [Any person receiving a service retirement annuity may be employed without affecting the annuity:

[(1) on a part-time day-to-day basis not to exceed 120 school days in a single school year as a substitute for an employee who is absent from duty; or

[(2) in a vacant position as a substitute until the position can be filled, but not to exceed 45 school days.]

§31.7. Regular Employment Having No Effect on Annuity. Any [retired] person receiving a service retirement annuity may, without affecting payment of the [service retirement] annuity, be employed during any month in Texas public education [a public school of Texas] on as much as one-half the full-time load for the particular position according to the personnel policies of the employer, provided the person is not also employed as a substitute in that month. The exception described in this section is not available to persons who have elected the exception described in §31.12 of this title (relating to Employment Up to Five Months on as Much as Full Time). The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.1 of this title (relating to Eligility for Retirement on the End of May)).

§31.9. Public Education Institution [School]. The definition of "public educational institution [school]" is any educational institution in the State of Texas supported wholly or partly from public [state] funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857125 Bruce Hineman
Executive Secretary
Teacher Retirement System of Texas

Earliest possible date of adoption:
September 13, 1985
For further information, please call (512) 397-6400.

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★34 TAC §31.12

The Teacher Retirement System of Texas (TRS) proposes new §31.12, concerning a new category of employment after retirement without loss of retirement benefits permitted by Texas Civil Statutes, Title 110B, §34.602, as enacted by the 69th Legislature, 1985. The section restates the statutory conditions in which its retirees may elect to work full time for a five-month period, specifies that the election of the exception precludes qualifying for other exceptions otherwise permitted by law, and details the employer's reporting responsibilities to the TRS.

Wayne Fickel, controller, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Mr. Fickel also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is a new category of permissible employment after retirement (full-time work for a semester) which allows public educational institutions to employ more retirees and will facilitate the early retirement programs of many public educational institutions. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Bruce Hineman, Executive Secretary, 1001 Trinity, Austin, Texas 78701.

The new section is proposed under Texas Civil Statutes, Title 110B, §35.102, which provide the Board of Trustees of the Teacher Retirement System of Texas with the authority to adopt rules for membership eligibility, administration of the funds of the retirement system, and transaction of its business.

§31.12. Employment Up to Five Months on as Much as Full Time.

(a) Any person receiving a service retirement annuity may, without affecting payment of the annuity, be employed on as much as full time for a period of no more than five consecutive months in a school year if the work meets the requirements in subsection (b) of this section and the person complies with the requirements of subsection (c) of this section.

(b) The work must occur:

(1) in a period, designated by the employee in advance, of five consecutive months between September and June, inclusive;

(2) in a school year that begins after the retiree's official date of retirement; and

(3) more than one month after the person's effective date of retirement (or two months after a retirement date set on May 31 under §29.14 of this title (relating to Elgibility for Retirement or the End of May)).

(c) A person must elect in writing on a form prescribed by TRS to take advantage of the exception described by this section. A person who, during a school year, has already used the exception described in §31.3 of this title (relating to Permissible Substitute Employment) for substitute work or in §31.7 of this title (relating to Regular Employment Having No Effect on Annuity) for work at more than half time is not eligible to elect this exception during the same school year. A person who has been employed in Texas public education during a school year and has forfeited service retirement benefits because the person did not qualify for one of the exceptions described in §31.3 of this title (relating to Permissible Substitute Employment) or §31.7 of this title (relating to Regular Employment Having No Effect on Annuity) is eligible to elect this exception during the same school year. The election must be made before the person begins the work to be subject to the exception described in this section. The person making the election must designate on the form the five-month period during which the exception is to apply. For the election to be effective, the prospective employer of the person must certify on the election form that the contemplated employment after retirement is in the best interest of the employer. A separate election form must be filed for each school year that the person wishes this exception to apply.

(d) A person will forfeit annuity payment for any month in the school year outside the five consecutive month period designated on the person's election form during which the person works in any position in a Texas public educational institution. This applies even if the work would otherwise qualify for an exception under §31.3 of this title (relating to Permissible Substitute Employment) for substitute work or §31.7 of this title (relating to Regular Employment Having No Effect on Annuity) for no more than half time employment. However, substituting or work at no more than half time furing the designated five-month period will be treated as any other employment permitted during that period.

(e) The election of the exception described in this section may not be modified or revoked after the person receives an annuity payment under it. A person may not designate a period of less than five months for the exception to apply unless the remaining time in the school year during which it can apply requires it.

(f) Employers must submit to TRS the election forms signed by their prospective employees if and when certified by the employer as required by subsection (c) of this section. Employers will report separately to TRS all work in a school year by persons with an election of this exception in effect. Substituting or work at no more than half time by a person with the election in effect will not be reported under those categories, but as work under this exception.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1985.

TRD-857127 Bruce Hineman
Executive Secretary
Texas Retirement
System of Texas

Earliest possible date of adoption:
September 13, 1985
For further information, please call
(512) 397-6400.

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Part V. Texas County and District Retirement System

Chapter 103. Calculation of Types of Benefits

★34 TAC §103.1

The Texas County and District Retirement System proposes amendments to §103.1 concerning actuarial tables, on the basis of which various types of benefits are to be calculated. The amendments bring the tables more closely in line with the actual mortality experience of system retirees in recent year.

Terry Horton, comptroller, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

J. Robert Brown, director, has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is that the retirement system, in calculating benefits payable monthly during the lifetime of persons qualifying for such benefits after October 1, 1985, will use mortality tables that (in conformity to past experience of the system with actual mortality of its annuitants) anticipate that future annuitants will live longer than tables presently used anticipate. The use of the proposed new mortality assumptions will contribute to continued actuarial soundness of the system. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed, because although the proposed new mortality assumptions will reduce somewhat the monthly benefit amount payable by reason of each dollar of contribution made by or for the member, the assumed rate of interest used in calculating such benefits is concurrently being raised from 4.5% to 7.0% per annum. In consequence, no monthly benefit calculated under the formula that will be in effect after October 1, 1985, will be less than one calculated under the formula currently in effect, excepting for those persons retiring at ages above 80.

Comments on the proposal may be submitted to J. Robert Brown, Texas County and District Retirement System, 400 West 14th Street, Austin, Texas 78701.

The amendments are proposed under Texas Civil Statutes, Title 110B, Subtitle F, §55.102 and §55.110, 1925, as amended, which provide the board of trustees with the authority to adopt rates and tables considered necessary for the retirement system and to adopt rules necessary or desirable for efficient administration of the system.

§103.1. Actuarial Tables.

(a) Service retirement benefits on service retirements on which the first benefit is payable on or after October 1, 1985, [January 1, 1982], shall be calculated on the basis of the UP-1984 table with an age setback of five [two] years for retired members and an age setback of 10 [eight] years for beneficiaries of retired members, with a 30% reserve refund assumption for the standard benefit.

(b) Disability retirement benefits on disability retirements, on which the first benefit is payable on or after October 1, 1985 [January 1, 1982], shall be calculated on the basis of 70% [80%] of the 1965 Railroad Retirement Board disabled annuitants mortality table, with a 30% [35%] reserve refund assumption for the standard benefit, and on the basis of the UP-1984 table with an age setback of 10 [eight] years for beneficiaries of disabled annuitants.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 5, 1985.

TRD-857089 J. Robert Brown
Director
Texas County and
District Retirement
System

Proposed date of adoption:
September 20, 1985
For further information, please call
(512) 476-6651.

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Withdrawn Rules

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a rule by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing. If a proposal is not adopted or withdrawn within six months after the date of publication in the *Register*, it will automatically be withdrawn by the *Texas Register* office and a notice of the withdrawal will appear in the *Register*.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 73. Laboratories

Testing Water Samples

★25 TAC §73.1

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new §73.1, concerning testing water samples. The text of the new section as proposed appeared in the April 5, 1985, issue of the *Texas Register* (10 TexReg 1121).

Issued in Austin, Texas, on August 1, 1985.

TRD-856093 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: August 2, 1985
For further information, please call (512) 458-7236.

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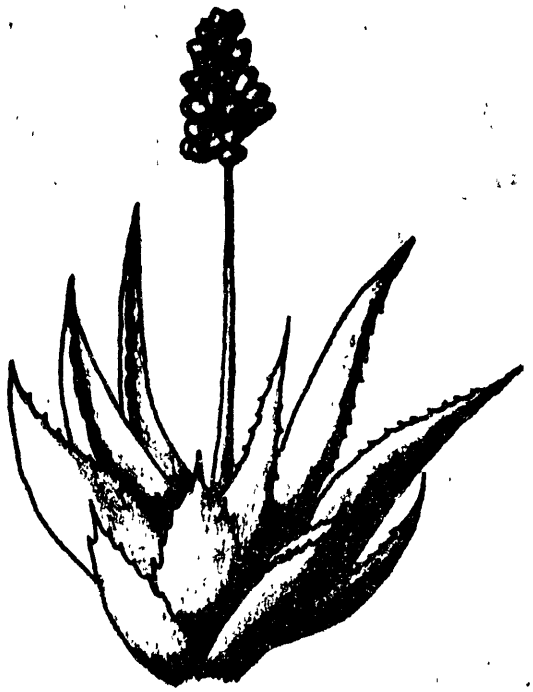

Adopted Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *Register*. The rule becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the rule with changes to the proposed text, the proposal will be republished with the changes.

TITLE 22. EXAMINING BOARDS

Part XXXII. State Committee of Examiners for Speech-Language Pathology and Audiology

Chapter 741. Speech-Language Pathologists and Audiologists

Subchapter A. General Information

★22 TAC §741.2

The State Committee of Examiners for Speech-Language Pathology and Audiology adopts an amendment to §741.194, with changes to the proposed text published in the June 7, 1985, issue of the *Texas Register* (10 TexReg 1820). Sections 741.2, 741.121-741.129, 741.121-741.123, 741.163, 741.181, 741.193, 741.197, and 741.208-741.210 are adopted without changes and will not be republished.

These rules implement the requirements of the Speech-Language Pathology and Audiology Licensing Act, Texas Civil Statutes, Article 4512j. These final rules will safeguard the public health, safety, and welfare by establishing procedures and policies concerning the licensing and regulation of speech-language pathologists and audiologists.

The rules cover the examination requirements, continuing education requirements, reduction in the fees, a roster of licensees, and a consumer information booklet.

A commenter recommended that the phrase "upon recommendation of the Committee of Examiners," be deleted in §741.194(f). The committee agrees and has deleted the prase and appropriately reworded the subsection.

Other comments were received on proposed §741.64, concerning licensed aids in speech-language pathology, and proposed §741.84, concerning licensed aids in audiology. Some of the comments supported the proposed changes and some of the comments objected to the proposed changes. However, the sections are not being submitted for final adoption at this time.

No group or association commented on the sections being adopted. An individual commented on proposed §741.194. The commenter did not object to its adoption but had a recommendation for change.

The amendment is adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to approval of the Texas Board of Health, with the authority to adopt rules concerning the licensing of speech-language pathologists and audiologists.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 31, 1985.

TRD-857002 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 1, 1985
Proposal publication date: June 7, 1985
For further information, please call (512) 458-7502.

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Subchapter G. Licensure Examinations

★22 TAC §§741.121-741.129

The repeal is adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to approval of the Texas Board of Health, with the authority to adopt rules concerning the licensing of speech-language pathologists and audiologists.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 31, 1985.

TRD-857001 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 1, 1985
Proposal publication date: June 7, 1985
For further information, please call (512) 458-7502.

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★22 TAC §§741.121-741.123

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to approval of the Texas Board of Health, with the authority to adopt rules concerning the licensing of speech-language pathologists and audiologists.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 31, 1985.

TRD-857000 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 1, 1985
Proposal publication date: June 7, 1985
For further information, please call (512) 458-7502.

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Subchapter I. License Renewal

★22 TAC §741.163

The amendment is adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to approval of the Texas Board of Health, with the authority to adopt rules concerning the licens-

ing of speech-language pathologists and audiologists.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 31, 1985.

TRD-856999 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 1, 1985
Proposal publication date: June 7, 1985
For further information, please call (512) 458-7502.

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Subchapter J. Fees and Late Renewal Penalties

★22 TAC §741.181

The amendment is adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to approval of the Texas Board of Health, with the authority to adopt rules concerning the licensing of speech-language pathologists and audiologists.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 31, 1985.

TRD-856998 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 1, 1985
Proposal publication date: June 7, 1985
For further information, please call (512) 458-7502.

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Subchapter K. Denial, Suspension, or Revocation of Licensure

★22 TAC §§741.193, 741.194, 741.197

The amendment is adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to approval of the Texas Board of Health, with the authority to adopt rules concerning the licensing of speech-language pathologists and audiologists.

§741.194. Procedures for Denying, Suspending, or Revoking a License.

(a) Prior to denying, suspending, or revoking a license for a violation of the Act or these sections, the subcommittee shall give the applicant or licensee the opportunity for a formal hearing in accordance with the provisions of subsections (b)-(f) of this section and §741.198 of this title (relating to Formal Hearings).

(b) The subcommittee shall give the applicant or licensee a written notice of the opportunity for formal hearing. The notice must be received by the applicant at least 20 days prior to the hearing. The applicant or licensee has 10 days from receipt of the notice to respond in writing to the subcommittee requesting a hearing. The postmarked date of the response is the date for determining if the response is within 10 days.

(c)-(e) (No change.)

(f) Formal hearings shall be held in Austin, Texas; however, upon motion of either party, the hearing examiner, or the committee, and for good cause, the hearing may be held in another location.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 31, 1985.

TRD-856997 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 1, 1985
Proposal publication date: June 7, 1985
For further information, please call (512) 458-7502.

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Subchapter L. Publications

★22 TAC §§741.208-741.210

The new sections are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to approval of the Texas Board of Health, with the authority to adopt rules concerning the licensing of speech-language pathologists and audiologists.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 31, 1985.

TRD-856996 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 1, 1985
Proposal publication date: June 7, 1985
For further information, please call (512) 458-7502.

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Crippled Children's Services Program

The Texas Department of Health adopts the repeal of §§37.81-37.106, and new §§37.82-37.86, 37.88-37.90, 37.92, 37.93, 37.95, and 37.96, with changes to the proposed text published in the June 7, 1985, issue of the *Texas Register* (10 TexReg 1825). Sections 37.81, 37.87, 37.91, 37.94, and 37.97 are adopted without changes and will not be republished.

As stated in the emergency adoption of §37.107, relating to medical eligibility criteria (10 TexReg 1384), the section has been renumbered to §37.97 in this final adoption.

The new sections update and clarify the program rules and requirements and provide for improved fiscal accountability.

These sections cover definitions; eligibility for patient services; services provided to patients; application process; authorization of services; denial, modification and termination of services; rights and responsibilities of parents, guardians, and conservators; providers and facilities; payment for services; development and improvement of standards and services; and appeals, confidentiality, gifts, and nondiscrimination.

Regarding §37.85(c)(1)(C), a suggestion was made that the specific procedural code system (International Code of Diagnoses, ninth revision) be changed to allow use of other major medical procedure codes to facilitate program administration. The department agrees and has changed the wording in this section to allow the use of major procedural code systems.

Regarding §37.85(b)(3)(D), several individuals have expressed concern about

the requirement to have the application notarized, as this presents a barrier to making application in the more rural areas of the state and to parents who do not have easy access to a notary public. Most commented that other programs such as food stamps, aid to families with dependent children, and supplemental security income do not have such a requirement. The department agrees and this requirement has been deleted.

Regarding §37.83(1)(B), a request was made to consider whether eligibility for an initial examination could be made by local or regional public health offices, as the time factor for approval from the central office is sometimes a barrier to early identification. The department declines to accept this recommendation, because there is no realistic way to decentralize eligibility determination at this time. No change is made in the rule.

Regarding §37.95(a), several comments were made in regard to the composition and function of the Crippled Children's Advisory Committee. One was in support of expanding the composition and others asked that more specific guidelines be included in the rules. The Board of Health will determine the composition, mission, and member compensation; therefore, no changes have been made in the rules.

Regarding §37.84(2)(G) and §37.92, one respondent expressed concern that services provided on a contract basis would present a hardship for some families in the more remote areas of the state, especially if statewide contracts were allowed. If the department expands the use of contracts, attention will be given to easy and expedient access to services. The department agrees with the concern, but no rule change is required.

Regarding §37.84(4), a recommendation was made that program priority levels be established at regular and specific time periods so that families and providers will be aware of eligibility factors. At this time, the department is not able to comply with this request as program funding has been cut for the biennium, the effects of which will not be known for several months into fiscal year 1986. It is the department's intention to adjust the priority levels once or twice a year as soon as projections of expenses can be made. The department agrees that changes in priority levels should be known and, therefore, has added the provision that parties directly affected by cutbacks in service be given a minimum of 30 days' notice. Section 37.84(4) has been changed accordingly.

Regarding §37.83(8), one respondent questioned the necessity of annual redetermination of eligibility. The department believes this to be needed to ensure current information be provided and, therefore, no change has been made.

Regarding §37.85(e), several persons expressed concern that the requirement of verification of residency and income will present a delay in determining eligibility. The department intends to develop procedures which are simple and expedient while still maintaining program accountability; therefore, no change has been made in the rule.

Comment was made that the rules contain no provision regarding medical indebtedness and cost of treatment as eligibility factors. The department finds that the use of these two factors have produced many inconsistencies and exceptions in eligibility determination. The Medically Needy Program, recently established by the Texas Department of Human Resources, is intended to provide relief to some families with medical indebtedness. Therefore, these two factors have not been added to the rules.

Regarding §37.96, a commentor suggested that the proposed heading of §37.96 covers appeals. However, the content of §37.96 goes beyond the area of appeals and covers the areas of confidentiality, gifts, and nondiscrimination. The section heading should reflect the contents. The department agrees with the recommendation and has modified the heading of §37.96.

The commenter also stated that the administrative review procedure in §37.96 (a)(1) should be more specific. The department agrees and has modified §37.96(a)(1). The commenter stated that the minimum requirements of the due process hearing in §37.96(a)(2) should be described. The department agrees and has included the minimum requirements of a due process hearing.

Regarding §37.83(1)(D), a few comments were made regarding the clarification of increase in functional independence. The department has established priority levels in this area to enable the program to adjust the levels according to available funding. Prognosis (expectation of improvement) is not related to independent functioning in determining eligibility. These two factors are included in the law and, therefore, there is no change in the proposed rule.

Regarding §37.84(2)(J), a respondent questioned the exclusion of therapists in private practice. The department intends to utilize this resource under certain circumstances, as is indicated in §37.91(1)(D). Section 37.84(2)(J) has been changed accordingly to include private therapists.

Regarding §37.82, a request was made to consider Early Childhood Intervention Programs as facilities. By law, facility includes hospitals, ambulatory surgical centers, and outpatient clinics. Therefore, the department has not accepted the recommendation, and no change is made to the rule.

Regarding §37.88, one respondent expressed concern that providing services close to home, as stated in subsection (a)(3), will affect the quality of services and the parent's right of choice of provider as required in subparagraph (a)(2). The department has approval procedures for facilities, physicians and dentists; the quality assurance unit, with the assistance of the advisory committee, will be reviewing other areas of program services to assure standards of care. Therefore, no change has been made in the rule.

Regarding §37.83(1)(D)*(ii)*, a recommendation was made that priority levels for increase in functional independence be reduced from five to four, because maintenance only is not coverable and does not relate to increase in functional independence. The department agrees, and §37.83(1)(D)*(ii)* has been changed accordingly.

Regarding §37.90(3)(A), it was recommended that since the Texas Ambulatory Surgical Center Licensing Act was recently passed, and since hospitals are exempt under this Act, the program should require all freestanding facilities, even if governed or affiliated with an approved hospital, to apply for program approval. In addition, licensure should be added as a criterion for program approved facilities. The department agrees and has changed §37.90(3)(A) accordingly.

Regarding §37.84(2)(I) and (J), a recommendation was made to require physical and occupational therapy and speech-language pathology progress reports on a six-month basis instead of three month basis, because this requirement would place on undue administrative hardship on facilities and therapists in private practice. The department agrees and the rules have been changed accordingly.

Regarding §37.93(2)(A)*(i)*, it was recommended that the sixth sentence of this clause as proposed, which reads "The previous ratio of cost to charges (RCC) statement would be for the fiscal year immediately preceding the fiscal year covered by the current RCC statement," be deleted, because it is repetitive with the sentence, "The previous RCC statement will be used for services provided prior to the effective date of the current RCC." The department agrees and this section has been changed accordingly.

Regarding §37.86(a)(2)(B), a recommendation was made that the rules clarify procedures if a child is determined eligible after a conditional authorization has been cancelled. The department agrees, and the section has been modified accordingly.

Other minor changes were made for the purpose of consistency and clarification of language in §§37.82, 37.83(7)(E), 37.84(4)(G), 37.90(1)(B) and (2)(A)*(ii)*, and 37.93(8).

Several individuals and groups have expressed concerns, made comments or recommendations, and requested clarification of certain parts of the proposed rules; however, none of the respondents were opposed to the adoption of the rules.

The following organizations commented on the rules: Advisory Committee to the Crippled Children's Services Program, Texas Association of Children's Hospitals, Texas Pharmaceutical Association, Hidalgo County Health Department, Public Health Region 11, Public Health Region 6, Public Health Regions 7/10, University of Texas Medical Branch, Texas Department of Mental Health and Mental Retardation, Ada Wilson Hospital of Physical Medicine and Rehabilitation, Inc., Dallas County Health Department, Public Health Region 5, Temple Memorial Treatment Center-Easter Seal Society, Brazos Valley Rehabilitation Center, Capital Area Easter Seal, and C. P. Foundation (Beaumont).

★25 TAC §§37.81-37.106

The repeal is adopted under Texas Civil Statutes, Article 4419c, §8, which provide the Texas Department of Health with the authority to adopt rules covering the Crippled Children's Services Program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 31, 1985.

TRD-857007 Robert A. McLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 1, 1985
Proposal publication date: June 7, 1985
For further information, please call (512) 465-2680.

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★25 TAC §§37.81.37.98

The new sections are adopted under Texas Civil Statutes, Article 4419c, §8, which provide the Texas Department of Health with the authority to adopt rules covering the Crippled Children's Services Program.

§37.82. Definitions. The following words and terms, when used in these sections, shall have the following meanings unless the context clearly indicates otherwise:

Act—The Crippled Children's Services Act, Texas Civil Statutes, Article 4419c.

Active case—All aspects of eligibility have been met. Eligibility continues for a period not to exceed one year's duration, as long as each of the eligibility criteria (a medical condition that is coverable by the program, expectation of improvement/increase in functional independence, financial need, age, and residency) are met.

Advisory committee—Those persons appointed by the department to serve in an advisory capacity to the program staff.

Anniversary date—The day in the year on which initial eligibility was established and from which program restrictions based on 12-month limitation periods will be measured.

Applicant—A person making application for the program, but not currently determined eligible.

Approved hospitals—Hospitals approved by the board to provide services to persons covered by the program.

Approved providers—Physicians or dentists approved by the board to provide services to persons covered by the program.

Board—Texas Board of Health.

Cancer—A malignant disease characterized by unrestricted growth of abnormal cells, the natural course of which is fatal; it includes but is not limited to leukemia, lymphoma, and histiocytosis.

Commissioner—The commissioner of health.

Crippled child—Any person under 21 years of age whose physical functions, movements, or sense of hearing are impaired by reason of a joint, bone, ossicular chain, muscle, neurological defect or deformity, or cancer, to the extent that the person is or may be expected to be totally or partially incapacitated for education or remunerative occupation. Persons with cystic fibrosis, regardless of age, are covered by the legislation.

Date of service—The actual date the service was initiated or provided.

Department—Texas Department of Health.

Eligibility date—The effective date of eligibility for the program, which is:

(A) the date all eligibility requirements were met, or

(B) the date of service if all written information to establish eligibility was received in the central office within 30 days.

Eligible person—A person who meets all program requirements for eligibility.

Emergency—The sudden onset of a life threatening situation in which a severe dibilitating condition or death would result if immediate medical care were not provided.

Expectation of improvement—The person's diagnosis or condition must be such that it is reasonable to expect that as a result of treatment the problem will be corrected or controlled or that increased function will be gained.

Facility—Includes hospitals, ambulatory surgical centers, and outpatient clinics.

Increase in functional independence—The person should have more independent functioning related to the basic activities of daily living, with or without equipment, based on progress in relation to age appropriate tasks or developmental milestones.

Other benefits—Any other resource available to the patient or the legally responsible adult(s) if the patient is a minor, for the costs of rehabilitation services, including third party insurance, personal financial resources or a legal cause of action, settlement, or judgment in behalf of the patient.

Patient—An eligible recipient of Crippled Children's Services, also referred to as eligible person.

Program—Crippled Children's Services Program, Texas Department of Health Central Office, mailing address: 1100 West 49th Street, Austin, Texas 78756-3179.

Rehabilitation—The process of restoring the function(s) of the body destroyed or impaired by congenital defect, disease, or injury. There must be expectation of improvement based on the medical prognosis made by the physician, while increase in functional independence will be determined by the functional status and potential of the patient as certified by the physician.

Specialty center—A facility and staff which, by virtue of fulfillment of program established minimum standards, is designated by the board for program use for comprehensive diagnostic and treatment services for a specific medical condition.

State—The State of Texas.

Treatment plan—The patient's plan of care (time and treatment specific) certified by and implemented under the supervision of a program approved physician.

§37.83. Eligibility for Patient Services. In order for a person to be eligible for crippled children's services, the person has to meet the medical, financial, and related criteria in this section.

(1) Medical criteria.

(A) Basic requirements. To be medically eligible for the program, the patient must have a coverable condition and there must be an expectation of improvement or increase in functional independence. Eligibility under the coverable condition does not mean that the patient is eligible for services under other coverable conditions.

(B) Categories of coverable conditions. The coverable conditions are listed in subparagraph (C) of this paragraph. These conditions include the general conditions described in the Act and the specific conditions approved by the board. The list in subparagraph (C) of this paragraph serves only as a broad guideline to assist potential applicants. The approved specific medical diagnoses for each of these conditions are described in §37.107 of this title (relating to Medical Eligibility Criteria).

(C) List of coverable conditions.

(i) orthopedically crippling conditions;

(ii) neurological disorders including epilepsy and spina bifida;

(iii) cardiovascular conditions;

(iv) cleft lip and/or palate and other severe craniofacial conditions;

(v) congenital anomalies of the gastrointestinal tract;

(vi) cystic fibrosis;

(vii) cancer;

(viii) chronic otological conditions affecting the ossicular chain if associated with cleft palate;

(ix) congenital anomalies of the external genitalia and genitourinary tract, excluding kidneys;

(x) hemophilia;

(xi) orthopedic complications of sickle cell anemia;

(xii) neurofibromatosis; and

(xiii) severe burns.

(D) Expectation of improvement/increase in functional independence.

(i) The Act provides that a person is not eligible to receive services from the program unless there is expectation of improvement of the condition, or an increase in functional independence, as defined in §37.82 of this title (relating to Definitions). The two conditions of cancer and cystic fibrosis are exceptions to this policy.

(ii) Expectation of improvement will be based on the medical prognosis made by the physician, while increase in functional independence will be determined by the functional status and potential of the patient as certified by the physician. The criteria for these two components are established by the program and may be utilized to set priorities if budgetary limitations make it necessary to restrict services. The criteria by priority are as follows:

Criteria for Expectation of Improvement by Priority Level

Priority	Expectation of Improvement
1	Excellent
2	Good
3	Fair
4	Poor
5	Grave

Criteria for Increase in Functional Independence by Priority Level

Priority	Increase in Functional Independence
1	Independent
2	Requires Minimal Assistance
3	Requires Moderate Assistance
4	Requires Maximum Assistance

(E) List of conditions not covered. Examples of conditions not covered include:

(i) prematurity;

(ii) hyaline membrane disease and respiratory distress syndrome;

(iii) failure to thrive;

(iv) apnea;

(v) acute infectious diseases;

(vi) digestive, metabolic, or endocrine disorders;

(vii) fractures not requiring surgery or extensive hospitalization;

(viii) ophthalmologic conditions, including strabismus;

(ix) cases requiring only custodial care;

(x) cases requiring cosmetic surgery;

(xi) cases requiring life support systems without potential for rehabilitation, including, but not limited to, ventilatory support;

(xii) emotional and psychological conditions;

(xiii) comatose conditions;

(xiv) conditions requiring organ transplantation or experimental procedures.

(2) Financial criteria.

(A) Financial need. Financial need is established on the basis of family income and assets which are legally available to the family.

(i) Family income. The family income used to determine eligibility is the gross income of those persons who have a legal obligation to provide for the applicant. Income includes earned wages, pensions or allotments, child support payments, alimony, or any monies received on a regular basis for family support purposes. Verification of income will be required as set out in §37.85(e) of this title (relating to Application Process). If the applicant is over the age of 18 and is determined to be in school, the applicant is considered to be a responsibility of the parent, guardian, or conservator; if an applicant is over the age of 18, is not in school and/or has been gainfully employed or is living independently, eligibility will be determined by the applicant's individual situation.

(ii) Assets. Assets legally owned or available to the family must be considered as a source of support to provide services for the applicant. Assets include such items as savings, real property other than a homestead, stocks, bonds, mutual or trust funds, IRAs, etc. Exemptions include a homestead (or a farm homestead of not over 200 acres); one automobile for an individual/two for a two parent family. Total assets are limited to a percentage of the amounts established for Supplemental Security Income (SSI) eligibility.

(I) The program will adjust the percentages by priority levels depending on available funds, as follows:

Priority Levels for Total Assets

Priority 1—100% or below of SSI limits
Priority 2—101% to 150% of SSI limits
Priority 3—151% to 200% of SSI limits
Priority 4—201% to 250% of SSI limits

(II) The SSI asset limitations are as follows:

Supplemental Security Income (SSI) Asset Limitations

Effective Date	One Parent Family	Two Parent Family (or Single Adult)
1-1-85	$1,600	$2,400
1-1-86	1,700	2,550
1-1-87	1,800	2,700
1-1-88	1,900	2,850
1-1-89	2,000	3,000

(iii) Priority level based on federal poverty guidelines. Income guidelines are based on percentages of the current federal poverty guidelines and may be adjusted by the program with the consent of the commissioner to meet budgetary limitations. Coverage is based by program priority on percentages of federal poverty guidelines. Income guidelines are maintained on a current basis and are adopted by reference in §37.98 of this title (relating to Income Guidelines). The program will adjust priority levels depending on available funds. Priority levels are as follows:

Program Priorities Based on Federal Poverty Income Guidelines

Priority 1—100% or below
Priority 2—101% to 115%
Priority 3—116% to 130%
Priority 4—131% to 145%
Priority 5—146% to 160%
Priority 6—161% to 185%
Priority 7—186% to 200%
Priority 8—201% to 215%
Priority 9—216% to 230%
Priority 10—231% to 245%

(B) Program coverage.

(i) If the factors considered for financial eligibility are within program guidelines, the eligible person will be allowed coverage as defined by the program. Items covered may include physicians' services, hospitalization, occupational and physical therapy, drugs and limited medical supplies, and medical equipment.

(ii) For all services covered by the program, program payment is considered to be payment in full.

(3) Other benefits available. Any other resource available to the eligible person, or the parent/guardian/conservator if the patient is a minor, must be utilized prior to the use of program funds. This includes benefits from a legal cause of action, settlement, or judgment in behalf of the patient, as well as personal financial resources and third-party insurance

(4) Health insurance. All health insurance policies held by the applicant and/or family must be listed on the application. If insurance eligibility was effective prior to program eligibility, premium payments on individual or group health insurance must continue. If insurance cannot be maintained:

(A) verification of uninsurability from the carrier or the employer must be provided to the program; or

(B) verification of loss of employment and/or inability to make premium payments must be provided.

(5) Age. The applicant must be under the age of 21 except for persons with cystic fibrosis. Persons 18 years of age or over:

(A) may be required to verify age, and

(B) must be claimed as a dependent on the parent's income tax return.

(6) Residency.

(A) The person must be a bona fide resident of Texas. A bona fide resident means a person who:

(i) is physically present within the geographic boundaries of the state;

(ii) has an intent to remain within the state, whether permanently or for an indefinite period;

(iii) actually maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(iv) does not claim residency in any other state or country;

(v) is a minor child residing in Texas and his/her parent(s) or managing conservator or the guardian of the child's person is a bona fide resident; or

(vi) is a person residing in Texas who is the legal dependent spouse of a bona fide resident; or

(vii) is an adult residing in Texas and his/her legal guardian is a bona fide resident.

(B) Verification of residency will be requested in the form of a valid driver's license, voter registration, motor vehicle registration, rent or utility receipts for two months prior to the date of application, school records, or other proof of residency if determined valid by the central office.

(7) Determination of eligibility.

(A) The final determination of eligibility is made by the program using the information provided by Parts A and B of the application. The program may request verification of any information given to establish eligibility, but at a minimum will require that documentation of income and residency be submitted with Part A of the application.

(B) Eligibility criteria are:

(i) a medical condition that is coverable by the program;

(ii) expectation of improvement/increase in functional independence;

(iii) financial need;

(iv) age; and

(v) residency.

(C) The person's case is considered to be active when all aspects of eligibility have been met and continues for a period not to exceed one year's duration, as long as each of the eligibility criteria in subparagraph (B) of this paragraph are met. The program will respond in writing within 15 working days after the application is received regarding eligibility status.

(D) Medical eligibility covers only those conditions that are listed on Part B of the application that are coverable and approved by the program. Program coverage of additional conditions will require the submission of another Part B for further medical eligibility determination.

(E) At the time eligibility is established, an eligibility date will be determined and entered into the program record. The eligibility date assigned will be:

(i) the date all requirements for eligibility were met, or

(ii) the date of service if the program was notified of the need for an application to be made, and if all written information to establish eligibility was received within 30 days of the date of service.

(8) Determination of continuing eligibility. Eligibility is established for a maximum of one year. Financial and medical eligibility must be re-established on at least an annual basis.

(A) Medical. On-going coverage of long term conditions may be provided if written plans of care are submitted which are time and treatment specific and are updated at least once per year. The program may request medical reports at any time the information submitted to the program is insufficient to determine continued eligibility or the need for specific services is unclear. Episodic conditions will require short term treatment plans on a more frequent basis. If the medical condition is improved to the degree the person no longer qualifies for the program, the case is considered closed. If the condition no longer meets the criteria for expectation of improvement/increase in functional independence, the person will be considered ineligible and the case will be closed. Upon closure of a case, the family and provider(s) will be notified. Administrative review is available (See §37.96(a) of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination)).

(B) Family circumstances.

(i) To maintain eligibility for program benefits the person must:

(I) continue to reside in the state,

(II) be age eligible,

(III) be in financial need as defined by the program,

(IV) continue health insurance premiums, if applicable,

(V) apprise the program within 30 days of changes in the following:

(-a-) permanent home address;

(-b-) insurance coverage;

(-c-) employment;

(-d-) income;

(-e-) assets.

(ii) The program may request current information when there is indication of a change of family circumstances but no less often than once a year.

(iii) Verification of income and residency will be required.

(iv) If insurance eligibility was established prior to program eligibility, premium payments on individual or group health insurance must continue. Noncompliance with this requirement will result in the termination of program benefits. If the person is considered uninsurable, verification of denial of coverage will be required from the carrier or the employer. If the family is unable to continue premium payments, verification of unemployment or financial inability to continue premium payments will be required by the program.

§37.84. Services Provided to Patient. The program provides no direct services but utilizes a reimbursement process through authorization of services rendered by approved and other participating providers. The patient should receive services as close to the home community as possible except in those situations where program contracts or policies require treatment at specific facilities or specialty centers.

(1) Types of assistance.

(A) Initial examination (early identification).

(i) This service is available to those persons whose financial, residence, and age eligibility has been established and who are suspect of having a condition coverable by the program. Any licensed physician in the state may provide the examination, but authorization prior to the exam is required if program payment is to be made. Payment for the examination, inclusive of any office tests or procedures, will be according to program fee schedules. Part B of the application must be submitted as the medical report and attached to the voucher for payment. Only a program approved physician can be reimbursed for further diagnosis, evaluation, and rehabiltation services.

(ii) The examination is available to persons who do not have a family physician nor access to any medical resource in the local community. The examination is made to establish a medical diagnosis so that the applicant can be referred to the appropriate specialty. If the applicant's condition is definable to the extent that a referral can be made directly to a specialist, an approved physician must be used (see subparagraph (B) of this paragraph relating to diagnosis and evaluation).

(B) Diagnosis and evaluation. Only program approved physicians and dentists may be reimbursed for specialty diagnosis and evaluation. If the diagnostic workup is to include any procedures that are not routine, specific diagnostic tests and procedures must be outlined in the request for services in order for program reimbursement to be made. A medical report must be submitted to the central office on Part B of the application form and must contain prognosis and a plan of treatment, including procedures, equipment, medications,

follow-up visits/care by the provider, and any services required in the home community.

(C) Rehabilitation services. As defined by the Act, rehabilitation services means a process of physical restoration of body functions destroyed or impaired by congenital defect, disease, or injury, and may include hospitalization, medical and dental care, braces, artificial appliances, durable medical equipment, medical supplies, and occupational and physical therapy. To be eligible for program reimbursement, the treatment phase must be for a condition included in §37.97 of this title (relating to Medical Eligibility Criteria) and determined by a care plan which will need periodic updating, depending on the condition. The program may establish criteria to determine the necessity of updating plans.

(2) List of services. The following list provides a brief description of the services the program may provide. Authorization must be requested for all services. Services may be limited as to frequency, duration, and cost for budgetary and administrative reasons.

(A) Initial examinations. With authorization prior to service delivery, any person who is suspect of having a condition coverable by the program and who meets the eligibility requirements of Part A of the application may have an examination by any licensed physician in the state.

(B) Medical evaluation and treatment. These services must be provided by physicians approved to participate in the program, except in emergency situations.

(C) Dental evaluation and treatment. Dental care is limited to correction of conditions related to cleft palate and other severe craniofacial anomalies, and to treatment which is essential to prevent bacterial endocarditis before and after cardiac surgery.

(D) Treatment in approved facilities. Hospital care must be provided in facilities approved for program participation, except in emergency situations. The length of stay is limited according to diagnosis and condition of the patient.

(E) Braces and prosthetic devices. These devices must be related to a condition covered by the program and prescribed by an approved physician or dentist whose specialty is related to the condition for which the device is requested.

(F) Medications. Medications must be prescribed by an approved provider for treatment of a condition covered by the program. Payment is made only after delivery of the medications. The provider must submit proof of receipt by the patient and a copy of the physician's prescription with the voucher.

(G) Durable medical equipment. Equipment must be related to a condition covered by the program and must be prescribed by an approved provider whose specialty is related to the equipment requested. Some equipment may be supplied on a contract basis and therefore ordered from a specific supplier. The provider must submit proof of receipt by the patient and a copy of the physician's prescription with the voucher.

(H) Medical supplies. Supplies must be necessary in the treatment of a program covered condition and prescribed by an approved physician or dentist. The provider must submit proof of receipt by the patient and a copy of the physician's prescription. Articles of routine daily living (for example, diapers) are not provided.

(I) Speech-language pathology. Services are restricted to treatment of cleft palate and craniofacial anomalies and must be provided by a speech-language pathologist licensed by the state and prescribed by a physician approved for program participation. Initial evaluations, treatment plans, and periodic progress reports covering no more than six months must be submitted to substantiate the need for services.

(J) Occupational and physical therapy. Services must be provided by a therapist licensed by the state and prescribed by a physician approved for program participation. Occupational and physical therapy services must be provided by comprehensive rehabilitation centers, hospitals, physicians' offices, and private therapists (in certain circumstances). Initial evaluations, treatment plans, and periodic progress reports covering no more than six months must be submitted to substantiate the need for services.

(K) Transportation. The program may provide transportation for the patient and, if needed, a responsible adult, to the nearest medically appropriate facility. The lowest cost appropriate commercial carrier should be used. The program cannot assist if the patient is eligible for transportation through Medicaid.

(L) Meals and lodging. The program may provide meals and lodging. The purpose is to enable a parent to obtain inpatient or outpatient care for a child at a center located away from their home or to reduce the length of stay of hospitalization. No meals or lodging are available if the visit is not overnight or if the patient's home town is within a 50 mile radius of the treatment center. The reason for the inpatient or outpatient visit must be directly related to a condition covered by the program.

(M) Transporting of deceased patient. The following services may be provided:

(i) transportation cost for the remains of a patient who expires in an approved facility while receiving program services if the patient was not in the family's city of residence, and the transportation cost of a parent or other person accompanying the remains;

(ii) expenses incidental to embalming of the deceased, as required for transportation;

(iii) a casket purchased at a minimum price as required for transportation;

(iv) other necessary expenses directly related to the care of the deceased's remains and the return of the remains to the place of burial within the state.

(3) Program coverage. To be eligible for program coverage a person must meet all eligibility requirements of the program and be at or below the percentage of the federal poverty guidelines in effect for the program according to income priority levels. Coverage may be limited or restricted if necessary to remain within available funding. The program will notify patients and providers of the extent of coverage when eligibility is determined and when authorization is requested.

(4) Limitations. The program may limit or restrict services to remain within available funding and to provide effective and efficient administration. If funding shortages occur, priority will be given to those persons already eligible and receiving services over those making initial application. The eligibility date will be used to make this determination. If cutbacks in services are required, patients and providers directly affected will be given a minimum of 30 days' notice. Services may be limited by the following means (not listed by priority):

(A) conditions covered;
(B) services provided;
(C) changes in income priority levels;
(D) limit of expenditures—by case, by service, by diagnosis, by annual cost;
(E) expectation of improvement;
(F) level of independent functioning;
(G) length of stay by procedure.

§37.85. Application Process.

(a) Availability of application. Applications are available to anyone seeking assistance from the program. Application forms may be obtained from any local or regional health department or the program. Many hospitals and physicians have application forms available. The completed application form is sent to the program for eligibility determination. The application is in two parts: Part A provides eligibility information regarding family circumstances; Part B provides medical eligibility information. To be considered by the program, the application must be made on department forms labeled Part A and Part B shown to be effective after September 1, 1985. Forms utilized prior to September 1985 may be accepted by the program through January 1, 1986, provided information requested on Part A and Part B is received by the program.

(1) To be eligible for the program, the applicant must:

(A) have a medical condition that is coverable by the program;

(B) have a condition for which there is expectation of improvement and/or an increase in functional independence;

(C) be in financial need as defined by the program;

(D) be under the age of 21 except for persons with cystic fibrosis;

(E) be a resident of Texas as defined by the program.

(2) The person is considered to be an applicant from the time the central office is notified (in writing or by telephone) that the person wishes to make application until the determination of eligibility is made by the central office. The program will respond in writing within 15 working days after Parts A and B of the application are received in the central office regarding eligibility status. Applications will be considered:

(A) denied if eligibility requirements are not met,

(B) incomplete if sufficient family information is not provided (Part A) or if a form effective before September 1, 1985, is used after January 1, 1986;

(C) pending if medical information is not yet available (Part B),

(D) approved if all criteria are met.

(b) Part A—family circumstances.

(1) The applicant, or parent/guardian/conservator if applicant is a minor, must submit a properly completed and signed application form to the central office. Any documentation requested on the application must be attached to the form or it will be returned as incomplete.

(2) Information required on Part A includes, but is not limited to:

(A) data about the applicant—name, present location, date of birth, place of birth, social security number if applicable, and whether the applicant is currently eligible for Medicaid;

(B) data about the applicant's legally responsible person(s)—name, relationship, present address and permanent address, telephone, whether a resident of the state (requires verification);

(C) health insurance policies providing coverage for the applicant—insurer, policy number, group number, certificate number, and amount of monthly premium;

(D) income of legally responsible person(s)—requires verification;

(E) assets of legally responsible person(s)—description, value, monthly income available;

(F) other members of the household—name, relationship, age;

(G) other benefits available to the family or applicant;

(H) parent's statement of applicant's medical or health problem;

(I) name of family physician or medical facility used, if applicable;

(J) agreement to furnish the program a copy of the police report if applicant was injured in an auto accident (the police report must be received in the central office before any payment will be made);

(K) whether applicant's legally responsible adult can provide transportation out of town for medical treatment, if necessary;

(L) name, address, and phone number of person assisting the applicant's family in completing the application.

(3) An application, Part A, is considered incomplete for any of the following reasons:

(A) failure to provide information as requested on the form;

(B) lack of supporting documents, as requested on the form (i.e., income, residency, etc.);

(C) omission of signature on the application of parent/guardian/conservator or the adult applicant.

(c) Part B—medical information.

(1) In order to determine medical eligibility, Part B of the application form must be completed and sent to the program. The physician must provide at least the following:

(A) applicant's name, current address, date of birth, and crippled children's case number if available;

(B) diagnosis by *International Classification of Diseases, ninth revision, Clinical Modification*, (ICD-9 Codes) and name(s);

(C) services needed, including medical procedures (by name and procedural code number), equipment, and medications;

(D) names and addresses of facilities to be utilized;

(E) medical prognosis;

(F) functional status, current and future;

(G) treatment plan for a period not to exceed 12 months, including follow-up visits, occupational therapy and physical therapy services, drugs, equipment, and any services required in the home community.

(2) An initial examination is available to persons who do not have a family physician nor access to any medical resource in the local community. The examination is made to insure referral of the applicant to the appropriate specialty. Part A of the application process must be completed and the person determined eligible before authorization for an initial examination can be made. Part B must be submitted as the medical report and attached to the voucher for payment.

(d) Emergency situations. Emergency situations are treated as any other request and notification must be received within five working days of emergency care. The program will require the following specific information: the nature of the emergency; diagnosis; services being requested; name and address of facility; name and address of physician; name, current address, and date of birth of patient/applicant; name, address, and telephone of parents if patient/applicant is a minor. Eligibility must be established before any payment for services can be made; the program must receive a completed application (Part A and Part B) no later than 30 days after the date of service was initiated. Failure to comply with this 30-day deadline will forfeit the provider's and patient's/applicant's right to any claim for payment.

(e) Verification. The program may request verification of any information given to establish eligibility. This may include more documentation than required on the application if there is incomplete, inadequate, or conflicting information provided. Verification of income, assets, and residency is required as a minimum. Any application that is not accompanied by appropriate documentation will be returned to the sender as an incomplete application. The following information is required:

(1) Residency.

(A) Verification of Texas residency must be attached to the application and may be in the form of a copy of one of the following:

(i) a valid driver's license;

(ii) voter registration;

(iii) motor vehicle registration;

(iv) rent or utility receipts for two months prior to the month of application;

(v) school records; or

(vi) other documents of proof of residency if considered valid by the central office.

(B) If the applicant is a minor, the residency status of the parent/conservator is applied.

(2) Age. The program may require verification of age through a copy of the applicant's birth certificate or Texas public school record.

(3) Income/assets:

(A) All income of the applicant or legally responsible person(s) must be verified in at least one of the following ways:

(i) copy of the most recent pay check;

(ii) copy of the most recent pay check stub/monthly employee earnings statement;

(iii) employer's written verification of gross monthly income;

(iv) pension/allotment award letters;

(v) Internal Revenue Service Form 1040 and supporting schedules for the most recently completed year. The program may require submission of this item to verify income and assets;

(vi) other documents of proof of income if considered valid by the central office.

(B) If the applicant is over the age of 18, a copy of the legally responsible person's Internal Revenue Service Form 1040 may be required to establish the applicant as a dependent.

(C) If the responsible person(s) is unemployed, a statement of termination from the employer or evidence of Texas unemployment insurance enrollment is required.

(D) If the applicant can be confirmed as Medicaid eligible, no verification of income is required.

(E) The program will request current information on family circumstances on an annual basis or at any time there appears to have been a change that would affect eligibility status.

(f) Notification of acceptance. Notification of eligibility status will be mailed within 15 working days after Part A and Part B of the application have been received by the program. Any limitations or restrictions of services will be explained, whether related to financial status, the treatment plan, or the budgetary limitations of the program. Any questions regarding coverage should be addressed to the program and not the provider. Incomplete applications will be returned to the applicant.

(g) Denial. The denial of any application to the program will be in writing and will include the reason(s) for such denial. The applicant has the right of administrative review and a due process hearing as set out in §37.96(a) of this title (relating to Right of Appeals, Confidentiality, Gifts, and Nondiscrimination).

(h) Reapplication. Any person has the right to reapply for program coverage at any time or when there is change of situation or condition. If there has been no service authorized by the program since September 1, 1984, reapplication will be required for continued program coverage. An updated Part A and Part B must be received by the program on each patient at least once every 12 months so that eligibility can be redetermined.

§37.86. Authorization of Services.

(a) Types of authorization.

(1) Standard authorization. Authorization is the program's method of approving the payment of services for an active case. If a service is authorized, payment is guaranteed to the provider if the service is not covered by a third party resource. A request for authorization may be received by telephone or in writing prior to the date of service but must be received within five working days of the service date. The program will not pay for any service rendered more than five working days prior to receipt of notification. All conditions of eligibility must be met. These conditions include: a completed application, current and sufficient financial information, current and sufficient medical information, services that are related to a coverable condition, determination by the program that the applicant is eligible, and either:

(A) an approved provider if required under §37.90 of this title (relating to Approved Providers and Facilities),

(B) services prescribed by an approved physician or dentist, or

(C) a provider as classified in §37.91 of this title (relating to Other Participating Providers and Facilities). Any procedures or treatment must be among those services listed under §37.84(2) of this title (relating to Services Provided to Patients). The program may prioritize or restrict services according to budgetary limitations. It is the provider's responsibility to request services in specific terms so that an authorization may be issued and sufficient monies encumbered to cover the cost of the service.

(2) Conditional authorization.

(A) A conditional authorization is the program's method of approving payment on a conditional basis when there is insufficient information available for the program to determine eligibility or the need for service. The program will not pay for any service rendered more than five working days prior to receipt of notification. Conditional authorization will be used under the following circumstances:

(i) when services need to be provided and eligibility status has not been determined;

(ii) when medical or financial information on an approved patient needs updating; and/or

(iii) when the necessity for a service needs written documentation.

(B) Notification of conditional authorization will be provided in writing to providers and parents with the understanding that the authorization will be honored by the program only if all information needed to establish or confirm eligibility or information to justify the need for a service is received in by the program within 30 days of the date the service was initiated, and if all conditions of eligibility are met. The notification letter will include those items needed by the program to remove the conditional status. If the information is received within the time allowed, a voucher will be issued to the provider. Conditional authorizations will be cancelled after the 30-day deadline if the information is not received. If the information is not received within the 30-day limit and the child is later determined eligible for the program, the provider(s) must request authorization of services within five days of the date of service.

(3) Recurring authorization. A recurring authorization is the program's method of approving a series of services related to an on-going course of treatment for a period of up to 12 months. Recurring authorizations will be issued only if a written plan of treatment is submitted to the program and progress reports are received as requested by the program.

(b) Third-party reimbursement. Under the provisions of the law, any private or public medical insurance or other benefits available to the patient must be utilized prior to the use of program funds.

(1) Public or private health insurance.

(A) Any health insurance policies that provide coverage to the applicant/patient must be utilized before the program can be of assistance. Providers must request authorization of service but must bill private insurance to determine the amount of coverage available prior to submitting any claim to the program for payment. Third-party explanation of benefits (EOB's) must accompany any claim sent to the program for payment. If a claim is rejected by a third party, the provider may bill the program if the service was authorized, and if the rejection letter or EOB is received by the program within 30 days of the date of the rejection, but no later than 180 days from the date of service. Claims rejected by Medicaid or any private insurance on the basis of late filing will not be considered for payment by the program.

(B) The program will not supplement any Medicaid payments; however, services beyond Medicaid coverage can be provided.

(C) The program will not pay any claim rejected by Medicaid on the basis of lack of medical justification.

(2) Liability cases. If a patient's medical condition has resulted from accidental injury in which a claim (liability claim) could be filed, services may be authorized. The program may file an intervention action at the direction of the commissioner through the attorney general's office in any liability suit to gain reimbursement of expended state funds.

(c) Encumbrance system. At the time of authorization, an encumbrance of monies approximate to the cost of service or according to fee schedules as established by the program will be executed in order to provide a means of fiscal accountability and guarantee of payment to providers.

(d) Limitations. The program may limit or restrict services to remain within available funding and to provide effective and efficient administration. The program may establish priorities by type of service for budgetary reasons.

(1) Inpatient hospital care. Payment of inpatient hospital care is limited to 60 days during a 12-month period, based on the patient's anniversary date, and specifically to the number of days allowable according to condition and procedure. Any extension of the specific allowable will require a conditional authorization from the central office and will be based on medical justification. Friday and weekend admis-

sions are not allowed unless an emergency exists. In emergency situations, unapproved providers may request a maximum of two days' authorization, or coverage until the patient is stabilized, whichever is less.

(2) Inpatient rehabilitation care. Payment of rehabilitation inpatient care is limited to 90 days during a 12-month period, based on the patient's anniversary date. An initial admission not to exceed 30 days must be based on the functional status and potential of the patient as certified by the physician. Any extension will be dependent on the patient's medical condition, plan of treatment, and progress.

(3) Physical and occupational therapy services.

(A) Physical and occupational therapy services are limited to certain conditions and must not be available from any other source. Services may be provided when progress can reasonably be expected, and when one or more of the following circumstances exist:

(i) the child is age 0 to three and progress can reasonably be expected;

(ii) the child is over three years of age, not presently eligible for special education services through the public school system, and has experienced a change in medical status resulting in a handicapping condition requiring therapy services;

(iii) the child needs short term therapy to assist the rehabilitation process following medical intervention, for example, surgery;

(iv) the child and/or family needs the assistance of a therapist for instruction in activities of daily living, with or without the use of specialized equipment, to develop independence in the home environment.

(B) Services are authorized in relation to evaluation and therapy plan, and may be limited as to frequency and duration.

(4) Other limitations. The program may limit or restrict services to remain within available funding and to provide effective and efficient administration. Services may be limited in the following ways (not listed by priority):

(A) conditions covered;

(B) services provided;

(C) changes in income guidelines;

(D) limit of expenditure by case, diagnosis, service, or annual cost;

(E) expectation of improvement;

(F) level of independent functioning;

(G) length of stay by procedure.

(e) Services related to surgery (anesthesiology, radiology, pathology). Services related to surgery are considered authorized at the time of the authorization for surgery, but the individual anesthesiologist, radiologist, and/or pathologist must notify the program to identify themselves as the providers who performed the service and to whom the voucher(s) should be sent. If the patient is covered by public or private health insurance, a copy of the letter of rejection or EOB must be attached to the claim and received by the program within 30 days of the date of rejection (see subsection (a)(1) and (2) of this section.

(f) Approved facilities. The program may make special arrangements with medical facilities or providers to provide specialty services for medical screening, diagnosis, treatment and follow-up for groups of patients for cost-effective reasons. Any such arrangements must be in writing as a letter of agreement or contract, as provided in §37.92 of this title (relating to Contracts and Written Agreements).

(g) Out of state services.

(1) Since the Act requires that physicians and dentists be licensed to practice in Texas and hospitals be approved by the Board of Health, authorizations for out-of-state services for medical, dental, or hospital care will not be made. The quality of care at medical centers within the state is comparable to that available in other major centers out-of-state, and services should be provided as close to the patient's home as possible. No out-of-state payments will be made for accidents or injuries or illness that occur out of the state.

(2) Exception: Exceptions may be made in those situations that develop in Texas where it is clearly a hardship or clearly a great risk for a child to be transported to an adequate medical facility in Texas when an out-of-state facility within 50 miles of the Texas border is closer. Under these circumstances, all program policies and procedures will apply, including the legal requirement that physicians and dentists licensed to practice in Texas be utilized.

§37.88. Rights and Responsibilities of Parents/Guardian/Conservator or the Adult Patient.

(a) Rights. The parent/guardian/conservator or the adult patient shall have the right:

(1) to apply for eligibility determination;

(2) of free choice of providers within program limitations of approved providers;

(3) to receive services as close to the home community as possible, except when program contracts or policies require the use of specific facilities or specialty centers;

(4) of notification of modification, suspension, or termination of service;

(5) to refuse entry into the home to any employee, agent, or representative of the department;

(6) to appeal program decisions within 10 working days of the date of written notification of program decisions.

(b) Responsibilities. The parent/guardian/conservator or adult patient shall have the responsiblity:

(1) to provide accurate information regarding any change of circumstance which might affect eligibility, within 30 days of such change;

(2) to reimburse the program if third-party payments are made directly to the patient or parent/guardian/conservator for services or equipment purchased by the program;

(3) to consult with the provider regarding authorization of service from the program prior to service delivery;

(4) to utilize provided services appropriately, especially to keep appointments and to use supplies and equipment judiciously;

(5) to utilize insurance and other assets and to inform service providers of such benefits/assets;

(6) to notify the program of any other benefits available to the patient at the time of application or thereafter;

(7) to bear a portion of the expense of medical or dental care if deemed financially able by the program. Items of routine daily living, such as diapers, are not covered by the program.

§37.89. Providers and Facilities.

(a) The Act authorizes the board to select the physicians, dentists, facilities, and specialty centers to participate in the program according to criteria and procedures adopted by the board. Because of the varied needs of handicapped children and many disciplines that work with these children, the program has two types of facilities and providers:

(1) those who have made application for participation in the program and have been notified that they are "approved"; and

(2) those not required to be approved by the program that are considered "other participating providers."

(b) In addition, the law requires that all providers accept program payment as payment in full for services furnished or rendered. Since program fee schedules may be lower than customary charges, the program will make every effort to inform all providers of program policies and procedures prior to the delivery of any service.

(c) Providers must request authorization in specific terms in order for the program to determine cost and encumber adequate funds for payment of services so that provider payment can be assured.

(d) The law specifies that payment for program services are secondary to other public and private health insurance programs. Providers must agree to utilize all third-party resources available to the patient, including Medicaid, prior to requesting payment.

(e) Overpayments made in behalf of patients to providers must be reimbursed to the department by lump sum payment or, at the discretion of the department, in monthly installments or out of current claims due to be paid the provider.

§37.90. Approved Providers and Facilities. All approved providers must agree to abide by program rules and regulations, to accept program fees as payment in full, and not to discriminate against patients on the basis of insurance or Medicaid status. The following groups of providers must be processed through an application process to determine their desire to participate within the program's rules as approved by the board and to determine their qualifications in relation to the criteria for participation as decided by the board.

(1) Physicians and dentists. To be approved for program participation the person must submit a fully completed application and attach the documents as requested on the form. Criteria and stipulations include but are not limited to:

(A) a valid license to practice medicine or dentistry in Texas;

(B) board certification in a recognized specialty of the American Board of Medical Specialties, or certification by American dental specialty boards (this requirement may be waived by the program only in exceptional situations, for example, medical emergencies and geographic coverage);

(C) an established practice located within Texas;

(D) a specialty practice in the state for at least one year (in exceptional situations, this requirement may be waived).

(2) Hospitals.

(A) Criteria for hospital approval includes, but is not limited to:

(i) current approval by the Joint Commission on Accreditation of Hospitals;

(ii) location within Texas, unless as provided in §37.86(g) of this title (relating to Authorization of Services);

(iii) program approved medical staff sufficient to meet anticipated program case load;

(iv) a definable pediatric unit or facilities, equipment, and qualified staff necessary to meet the special needs of program eligible patients, as determined by the program;

(v) an occupancy rate during the previous two years not less than the statewide average for the period;

(vi) on-site visits and/or audit privileges to program staff.

(B) To facilitate the availability of medical treatment in all areas of the state, while retaining the assurance of quality care, approval of some hospitals may be on a conditional basis, with restrictions limiting the hospital to treatment of certain specific conditions. Application materials should be updated at least every two years. The program may contract with a limited number of facilities to assure program cost containment.

(3) Ambulatory surgical care facilities.

(A) Ambulatory surgery services may be utilized by the program as a cost efficient means as long as quality of care is assured. Any hospital approved for program participation whose Joint Committee on Accreditation of Hospitals accreditation includes Hospital-Sponsored Ambulatory Care Services may be utilized for ambulatory surgery. However, freestanding facilities, even if governed or affiliated with an approved hospital, must apply for program approval. Facilities that apply for approval and that meet the criteria as set forth by the program, may also qualify for participation. The program may contract with a limited number of facilities to assure program cost containment. As a minimum, such criteria must include:

(i) state licensure;
(ii) rights of patients;
(iii) governance;
(iv) administration;
(v) quality of care;
(vi) quality assurance program;
(vii) medical records;
(viii) facilities and environment;
(ix) surgical services;
(x) pathology and medical laboratory services;
(xi) radiology services; and
(xii) other professional and technical services.

(B) The program may also use Medicare certification for ambulatory surgical services provided such centers are proficient in pediatric oriented surgery or services related to handicapping conditions. The criteria used by the Bureau of Licensing and Certification, Special Health Services, Texas Department of Health, includes:

(i) staff requirements;
(ii) record keeping;
(iii) state licensure;
(iv) administration;
(v) medical staff; and
(vi) surgical services.

(4) Specialty centers. The program may recognize centers in various localities in the state which may be designated for program use for diagnosis and treatment of certain conditions needing specialized evaluation and treatment, and comprehensive planning and follow-up. Such facilities must meet specific criteria as set forth by the program. Lists of facilities which are approved for program participation may be obtained from the program.

(5) Other approved providers and facilities. With changes in the health delivery system and in consideration of cost effectiveness and efficiency, the program may, with the approval of the board, establish other areas of approved providers and facilities.

(6) Provider application for program approval.

(A) Applications may be obtained from the program on request. A copy of the program's rules and regulations and a provider's manual will be mailed to the applicant to provide current information regarding the program. The completed application will be reviewed by program staff for correctness and to verify that all professional criteria have been met, including required documentation. Notification of the status of the application will be made within 15 days of program receipt of the application.

(B) Any provider may withdraw from program participation at any time by notifying the program in writing of its desire to do so.

(7) Denial/modification/suspension/termination of provider or facility approval.

(A) The program may deny, modify, suspend or terminate the approval of providers or facilities for due cause. Any provider or facility submitting false or fraudulent claims or failing to provide and maintain quality services or medically acceptable standards is subject to review, fraud referral, and/or administrative sanctions.

(B) A due process hearing is available to any provider for the resolution of conflict between the program and the provider.

§37.92. Contracts and Written Agreements. In order to conserve funds and effectively administer the program, the program may contract on a bid basis for treatment, equipment, medications, supplies, and other services. The program may enter into contracts or written agreements with individuals or organizations in regard to the development and improvement of standards and services for the program. The program may utilize consultants from any medical or dental specialty or other discipline to address specific issues and problems in relation to the identification, diagnosis and evaluation, or rehabilitation of handicapped children or young adults.

§37.93. Payment of Services. No payment will be made for services not authorized by the program except as indicated in paragraph (8) of this section. Payment for any service authorized by the program may be made only after the delivery of the service. If a service has been authorized by the program for payment, the family must not be billed for the service or be required to make a pre-admission or pre-treatment payment or deposit. Providers and facilities must agree to accept established fees as payment in full although such fees may be below usual and customary charges.

(1) Claims payment, denial, rejection. All payments made in behalf of a recipient will be for claims received by the program within 90 days of the date of service, or the latter date shown on the preprinted program voucher (90-day filing

deadline), and/or within the submission deadlines listed in subparagraphs (B) and (C) of this paragraph. Claims will either be paid, denied, or rejected, generally within 60 days of receipt by the program.

(A) Claims will be paid if submitted on the program approved voucher, if authorized and if required documentation is received with the voucher.

(B) Denied claims are claims which are incomplete, submitted on the wrong form, or contain inaccurate information when originally submitted.

(i) Payment may be made if the provider corrections are accomplished and the claim is returned to the program within 30 days from the program's notice of denial or within the initial 90-day filing deadline, whichever is later.

(ii) If the claim is incomplete because it lacks other third-party explanation of benefits (EOB), payment may be made if the original claim and completed EOB's are received by the program within 30 days from the date of the third party EOB, but no later than 180 days from the date of service.

(iii) Claims that have been denied in error by the program may be reconsidered for payment if the claims, with the error identified, are returned to the program within 30 days of the date of the denial notice, or within the initial 90-day filing deadline, whichever is later.

(iv) Claims that have been denied and are resubmitted for payment must be corrected and be accompanied by a copy of the program notice of denial. Corrections must be made to the original voucher (claim) if at all possible. If a new voucher is submitted, the original claim form must accompany the new voucher. Additional services will not be considered for payment on a resubmitted claim.

(C) Rejected claims are claims which fail to meet the filing deadline or are for ineligible recipients or services.

(i) Claims which have been rejected in error by the program may be reconsidered for payment if the claims, with the error identified, are returned to the program within 30 days of the date of the rejection notice, or within the initial 90-day filing deadline, whichever is later.

(ii) Claims which have been rejected but filed within the 90 day period, if resubmitted for payment, must be corrected. A copy of the program rejection notice must accompany the original claim. Corrections must be made on the original voucher (claim) if at all possible. If a new voucher is prepared, the original voucher must accompany the new claim form. Additional services will not be considered for payment on a resubmitted claim.

(D) Denied or rejected claims which do not meet the criteria in subparagraphs (B) or (C) of this paragraph may still be appealed through the program administrative review process or through the due process hearing procedure of the department.

(2) Hospitals.

(A) Ratio of Medicare allowable costs to charges (RCC).

(i) Payments to hospitals will be adjusted by the hospital's appropriate RCC, for the date and type of service provided. All hospitals participating in the program are required to submit a sworn statement of costs allowable under provisions of Title XVIII, Social Security Act (Medicare allowable costs), as amended, and the charges used to determine their current RCC. If a submitted RCC exceeds 1.0, the program will reduce the RCC to 1.0 when processing claims. The program may reimburse at less than 100% of the RCC due to equity of reimbursement and/or availability of funds. The participating hospitals must submit the RCC statement within 90 days after the close of their fiscal year. The current RCC statement will become effective 90 days after the end of the hospital's fiscal year and will apply to all services provided after that date. By definition, the current RCC statement is the statement for the most recently completed fiscal year for the hospital. The previous RCC statement will be used for services provided prior to the effective date of the current RCC. If the current RCC statment is not received by the date it is to become effective, claims for services provided after the effective date will be denied/rejected until the current RCC statement is received.

(ii) Inpatient RCC's will be provided using the Medicare allowable inpatient costs to charges.

(iii) Outpatient RCC's will be provided using the Medicare allowable outpatient costs to charges.

(iv) Hospitals may request revision of their RCC's during the year by submitting a revised RCC statement. The revision will be effective from the date the revised statement is received by the program.

(v) When requested, hospital records supporting these statements will be made available for examination by duly authorized representatives of the department.

(vi) All charges submitted to the program for inpatient or outpatient services will be reduced by the amount that is provided by any other third-party resource covering the patient. The RCC will be applied to the total charges, excluding personal items, before deducting the third-party payment. An itemized billing detailing services rendered to the patient must be submitted with the payment voucher.

(B) The program may utilize other methods of payment to hospitals if the RCC is discontinued by Medicare or if the program adopts a more cost effective method to pay for inpatient care. The program must give at least a 30-day notice to approved hospitals at any time there is a change in method of payment.

(3) Claims with insurance coverage. Any health insurance policies that provide coverage to the applicant/patient must be utilized before the program can be of assistance. Providers must bill private or public insurance to determine the amount of coverage available prior to submitting any claim to the program for payment. The provider may bill the program if the service was authorized, and if the explanation of benefits (EOB) or the rejection letter is attached to the voucher sent and is received by the program within 30 days of the date of the rejection, but no later than 180 days after the date of service.

(4) Program fee schedules. The program has adopted fee schedules which apply to most authorized services. Fee schedules are revised as appropriate in relation to available funding and customary charges. The program may adopt other fee schedules through contract or written agreement for budgetary or administrative reasons.

(5) Required documentation. The program requires documentation of the delivery of goods and services from the provider or facility. Program provider information is available to various kinds of providers and facilities on request and notification will be given regarding changes in policies and procedures for required documentation needed.

(6) Ninety-day claims submission deadline. No claim may be considered for program payment if it reaches the central office later than 90 calendar days after the date of service, except for claims involving third-party reimbursement, as provided in paragraph (1) of this section.

(7) Overpayments. Overpayments made in behalf of patients to providers must be reimbursed to the department by lump sum payment or, at the department's discretion, out of the current claims due to be paid the provider in behalf of patients. This will also apply to any person or persons who have a legal obligation to support the patient and have received third-party or liability payments. The opportunity for an administrative hearing is available to providers and to the patient or person(s) responsible for the patient, as provided in §37.96 of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(8) Linkage with Medically Needy Program. Patients eligible for both the program and the Medically Needy Program (MNP) through the Texas Department of Human Resources (DHR) may submit unpaid claims used in meeting the MNP spend-down provision, for payment consideration by the program if the services were rendered for a program eligible condition and the services were rendered no more than 30 days prior to the date the program received the patient's application. Claims must be submitted to the program after submission to DHR's MNP. The program may consider these claims for pay-

ment if funds are available and if the program receives within 30 days the claim returned by DHR. These are the only claims that the program may consider for payment without authorization.

§37.95. Development and Improvement of Standards and Services.

(a) Advisory committees. The department may establish advisory committees to assist the program with the development of policy alternatives as recommendations to the department. Such areas as medical criteria for program coverage and standards for providers may be addressed by the committee. The composition of advisory committees should include representation by physicians, dentists, facilities, other providers, and the general public. The board will decide the composition, mission, and member compensation of each committee prior to the establishment of the committee. In addition to policy advisory committees, the department may establish an advisory medical review team to review exceptional medical cases of applicants and patients and recommend to the program the extent of coverage permissable under the existing medical policies of the program.

(b) Utilization review.

(1) Utilization review activities may be accomplished through monitoring systems developed to ensure that services are of the appropriate quality and quantity. Utilization review will focus on the medical necessity of all services and the quality of care as reflected by the choice of services provided and the type of provider involved, to ensure an efficient and cost effective administration of the program.

(2) For economies of scale, and with the consent of the commissioner, the program may contract for concurrent or retrospective reviews of all or part of patient care services reimbursed through the program.

(c) Quality assurance. The program may establish a quality assurance unit to review the delivery of services at all levels, that is, central office, regional and local health departments, and direct service providers. The unit may provide professional support as well as reviewing service delivery components. It should also review consumer satisfaction.

(d) Cooperation with other agencies. The department will cooperate with public agencies, federal, state, and local, and with private agencies and individuals interested in the welfare of crippled children. The program will make every effort to establish cooperative agreements with other state agencies to define the responsibilities of each agency in relation to specific programs to avoid duplication of services.

§37.96. Appeals, Confidentiality, Gifts, and Nondiscrimination.

(a) Right of appeal. Any person aggrieved by a program decision to deny, modify, suspend, or terminate benefits or participation rights may appeal the decision in the following manner:

(1) Administrative review.

(A) Within 10 working days after receiving notice of denial, modification, suspension, or termination of benefits, a person aggrieved and wanting an administrative review shall respond to, or question, the program's decision and notify the program by certified mail of his/her request for an administrative review of the program's decision. Additional information bearing on the decision may be submitted at this time. Failure to request an administrative review within the 10-day period is deemed to be a waiver of the administrative review.

(B) Upon receipt of this response, a program administrative review team will affirm or reverse the proposed action, and respond in writing to the person, giving the reason(s) for the decision.

(C) Within 10 days after receiving written notice of the decision of the administrative review team, a person aggrieved by the program's administrative review may request a due process hearing from the department in accordance with the provisions of paragraph (2) of this subsection. A request for a hearing shall be sent to the program by certified mail. Failure to request the hearing within the 10-day period is deemed to be a waiver of the due process hearing.

(2) Due process hearing.

(A) The department will set a date and time at the Texas Department of Health central office in Austin, Texas, for the hearing.

(B) The hearing will not be conducted under the contested case provisions of the Administrative Procedure and Texas Register Act but will include the following:

(i) timely written notice to the person aggrieved of the basis for the decision and disclosure of the evidence on which the decision is taken;

(ii) an opportunity for the person aggrieved to appear before an impartial decision maker to relate the basis for the decision;

(iii) an opportunity for the person aggrieved to be represented by counsel or another representative;

(iv) an opportunity for the person aggrieved or representatives to be heard in person, to call witnesses, and to present documentary evidence;

(v) an opportunity for the person aggrieved to cross-examine witnesses; and

(vi) a written decision by the impartial decision maker, setting forth the reasons for the decision and the evidence upon which the decision is based.

(b) Confidentiality of information. All medical records and other information maintained by the department which is confidential by law shall not be disclosed to the public.

(c) Gifts and donations. The department may receive gifts and donations in behalf of the program, which are deposited in the state treasury and reappropriated to the program.

(d) Nondiscrimination statement. The Texas Department of Health operates in compliance with Title VI, Civil Rights Act of 1964 (PL 88-352) and the Code of Federal Regulations, Title 45, Part 80, so that no person will be excluded from participation in, or otherwise subjected to discrimination on the grounds of race, color, or national origin.

§37.98. Income Guidelines. The department adopts by reference the income guidelines set out in these sections. A copy of the guidelines is indexed and filed in the Bureau of Crippled Children's Services, Texas Department of Health, 1101 East Anderson Lane, Austin, Texas, and is available for public inspection during regular working hours.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 31, 1985.

TRD-857006

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 1, 1985
Proposal publication date: June 7, 1985
For further information, please call (512) 465-2680.

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Chapter 61. Chronic Diseases
Kidney Health Care Program Benefits

★25 TAC §§61.1-61.10, 61.12, 61.13

The Texas Department of Health adopts new §§61.3 and 61.6-61.9, with changes to the proposed text published in the June 7, 1985, issue of the *Texas Register* (10 TexReg 1845). The repeal of §§61.1-61.10, 61.12, and 61.13 and new §§61.1, 61.2, 61.4, 61.5, 61.10, 61.12, and 61.13 are adopted without changes and will not be republished.

These new sections are adopted for clarity and consistency of language and to facilitate compliance with and administration of the rules. The amendments will permit required changes to program benefits and program operations.

Rules are established concerning participation in the Kidney Health Care Program by military hospitals and out-of-state facilities. These sections also authorize the development of a drug formulary, changing the appeals process

and deleting the requirement for an independent audit, by a CPA, of contracted dialysis facilities. Under these sections, co-insurance benefits for Medicare covered Method II home patients will be discontinued, certain timeframes are expanded, provisional eligibility will be allowed patients who do not have a social security number, and the list of items allowed as documentation of residency is expanded.

It was recommended that the department delete the requirement that facility cost reports be audited by an independent CPA, as required in §61.9(a)(5)(C). The department agreed, and the language has been changed to reflect this change.

It was suggested that the hearing procedures mentioned in §61.7(b)(5) be spelled out. The department agrees, and language was added at §61.7(c).

A comment was made that the documents mentioned in §61.6(a)(4), (8), and (9) be enumerated for clarity. The department agrees, and this has been done.

It was recommended that §61.3(o) be reworded for clarity. The department agrees, and this has been done.

No organizations or groups commented on the rules. Several individuals commented on the rules. No one opposed the adoption of the rules but recommendations for changes were made.

The repeal is adopted under Texas Civil Statutes, Article 4477-20, §3(13), which provide the Texas Department of Health with the authority to adopt rules to provide adequate kidney care and treatment for the citizens of the State of Texas and to carry out the purposes and intent of the Texas Kidney Health Care Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 31, 1985.

TRD-857005 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 1, 1985
Proposal publication date: June 7, 1985
For further information, please call (512) 465-2654.

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The new sections are adopted under Texas Civil Statutes, Article 4477-20, §3(13), which provide the Texas Department of Health with the authority to adopt rules to provide adequate kidney care and treatment for the citizens of the State of Texas and to carry out the purposes and intent of the Texas Kidney Health Care Act.

§61.3. Payment of Program Benefits.

(a) Depending on the recipient's eligibility status, benefits are available for dialysis treatments, hospitalization, laboratory charges, home dialysis supplies, drugs and transportation, up to a maximum per recipient based upon:

(1) available funds;

(2) covered services, supplies, and drugs;

(3) any contract between the department and the recipient's participating facility; and

(4) the reimbursement rates as determined by the department.

(b) Benefits are payable only after all other possible third parties (e.g., private/group insurance, Medicare, Medicaid, or the Veterans Administration) have met their liability. The Texas Board of Health delegates to the commissioner of health the authority to waive this requirement in individually considered cases where its enforcement will deny services to a class of end-stage renal disease patients because of conflicting state or federal laws or regulations.

(c) The department may restrict or categorize service reimbursement to meet budgetary limitations. Categories will be prioritized based upon medical necessity, Medicare eligibility and projected Medicare payments for the different treatment modalities. In the event program benefits must be reduced, they will be reduced in a manner that takes into consideration medical necessity and Medicare coverage. The department may affect changes in benefits by either adding or deleting entire categories or by proportionate changes across categories, or by a combination of both these methods. The priority list, in order of highest priority, is as follows:

(1) benefits for drugs and transportation for all patients regardless of Medicare status;

(2) benefits for dialysis treatments and medical care during the pre-Medicare waiting period;

(3) benefits for dialysis treatments and medical care for patients not eligible for Medicare coverage;

(4) benefits for Medicare eligible patients who dialyze at home but do not receive all their support from a dialysis facility;

(5) benefits for medical care for Medicare eligible patients who dialyze at home and do receive full support from a dialysis facility;

(6) benefits for medical care for Medicare eligible patients who have received a kidney transplant;and

(7) benefits for medical care for Medicare eligible patients who dialyze in a dialysis facility.

(d) Payment methods.

(1) Payment can be made either directly to providers of eligible services, or as a reimbursement to the recipient for charges which he or she has paid for eligible services.

(2) Dialysis treatments will be reimbursed at the rates established in the contract with participating facilities.

(3) Payment to hospitals.

(A) RCC statement: ratio of Medicare allowable costs to charges (RCC) statement. Payments to hospitals will be adjusted by the hospital's appropriate RCC, for the date and type of service provided. All hospitals participating in the program are required to submit a sworn statement of costs allowable under provisions of the Social Security Act, Title XVIII (Medicare allowable costs), as amended, and the charges used to determine their current RCC. If a submitted RCC exceeds 1.0, the program will reduce the RCC to 1.0 when processing claims. The participating hospitals must submit the RCC statement within 90 days after the close of their fiscal year. By definition, the current RCC statement is the statement for the most recently completed fiscal year for the hospital. The previous RCC statement would be for the fiscal year immediately preceding the fiscal year covered by the current RCC statement. The current RCC statement will become effective 90 days after the end of the hospital's fiscal year and will apply to all services provided after that date. The previous RCC statement will be used for services provided prior to the effective date of the current RCC. If the current RCC statement is not received by the date it is to become effective, claims for services provided after the effective date will be denied/rejected until the current RCC statement is received.

(B) Inpatient RCCs will be provided using the Medicare allowable inpatient costs to charges.

(C) Outpatient RCCs will be provided using the Medicare allowable outpatient costs to charges, for outpatient services other than dialysis.

(D) Inpatient dialysis treatments will be reimbursed at the rate of outpatient dialysis for the hospital's geographic area.

(E) Hospitals may request revision of their RCCs during the year by submitting a revised RCC statement. The revision will be effective from the date the revised statement is received at the program.

(F) When requested, hospital records supporting these statements will be made available for examination by duly authorized representatives of the department.

(G) All charges submitted to the program for inpatient and/or nondialysis outpatient services will be reduced by the amount that is provided by any other third-party resource covering the recipient. The RCC will be applied to the total charges, excluding personal items, before deducting the third-party payment. An itemized billing detailing services rendered to the recipient must be submitted with the payment voucher.

(4) Physician services which are related to routine dialysis supervision and follow-up services will be reimbursed on a fee-for-service basis with a maximum monthly capitation amount. Dialysis-related physician's services will not be paid above the capitation amount. For other than dialysis services, physicians will be reimbursed on the basis of the maximum affordable payment schedule (MAPS) currently approved for the program by the department. Allowable services and reimbursement rates not listed in the MAPS will be as determined by the department.

(e) All benefits provided in behalf of recipients are limited to charges incurred in Texas except that recipients who are receiving treatment in a participating facility located out-of-state are eligible for transportation benefits to and from the facility, for medical services received at the facility, and for drugs purchased out-of-state.

(f) All benefits paid in behalf of recipients will be for claims received by the program within 90 days after the date of service rendered (90-day filing deadline) and/or within the submission timetables listed in paragraphs (1)-(3) of this subsection. Claims will either be paid, denied, or rejected. The procedure in paragraphs (1) and (2) of this subsection will be adhered to for denied or rejected claims. The procedures in paragraph (3) of this subsection apply to the initial submission of claims for newly eligible recipients.

(1) Denied claims are claims which are returned because they are incomplete or contain inaccurate information.

(A) A claim which meets the initial 90-day filing deadline but is incomplete would be denied. However, payment may be made if provider/recipient corrections are accomplished and the claim is returned to the program within 30 days from the program's notice of denial or within the initial 90-day filing deadline, whichever is later.

(B) A claim which meets the initial 90-day filing deadline but is incomplete because it lacks other third-party explanation of benefits (EOBs) will be denied. Payment may be made if the denied claim and completed EOBs are received by the program within 30 days from the date of the third-party EOB, or within the initial 90-day filing deadline, whichever is later.

(C) Claims which have been denied in error by the program may be reconsidered for payment if the claims, with the error identified, are returned to the program within 30 days of the date of the denial letter, or within the initial 90-day filing deadline, whichever is later.

(D) Claims which have been denied and are resubmitted for payment under the provisions of this policy must be corrected, complete, and be accompanied by a copy of the program letter of denial. Corrections must be made to the original claim form if at all possible. If a new claim form is prepared, the original claim form must also accompany the new claim form when it is resubmitted. Additional services or charges will not be considered for payment on a claim that was initially denied and then resubmitted.

(2) Rejected claims are claims which are returned because they fail to meet the filing deadline or are filed by ineligible providers, recipients or are for ineligible services.

(A) Claims which have been rejected in error by the program may be reconsidered for payment if the claims, with the error identified, are returned to the program within 30 days of the date of the rejection letter, or within the initial 90-day filing deadline, whichever is later.

(B) Claims which have been rejected and are resubmitted for payment under the provisions of this policy must be corrected and have been previously filed within the 90-day filing deadline. A copy of the program return letter of rejection must accompany the original claim. Corrections must be made on the original claim if possible. If a new claim form is prepared, the original claim form must accompany the new claim form. Additional services or charges will not be considered for payment on a claim that was initially rejected and then resubmitted.

(3) Initial claims for newly eligible recipients will be processed according to the provisions of subsection (f)(1) and (2) of this section and must meet the coverage limitations of subsection (h) of this section relating to retroactive coverage. Additionally, the following filing criteria will apply.

(A) For newly eligible recipients, claims received within 30 days after the date of the program eligibility letter will be processed for payment. The 90-day filing deadline does not apply during this 30-day period.

(B) Claims received after 30 days from the date of the program eligibility letter will be subject to the full provisions of this subsection and the 90-day filing deadline will apply.

(4) Denied or rejected claims, which cannot be resolved through paragraphs (1)-(3) of this subsection, may be appealed through the department's administrative hearing process as outlined in §61.7 of this title (relating to Denial of Application; Modification, Suspension, or Termination of Patient Benefits).

(g) Recipients who regain kidney function after dialyzing for a minimum of three consecutive months and who continue to reside in Texas may remain eligible for program benefits for a maximum of 12 months after the date of their last dialysis treatment. Recipients who regain kidney function after dialyzing less than three months will have their program benefits terminated, effective the day after their last dialysis treatment.

(h) Program benefits may be retroactive as follows.

(1) Except as provided in paragraph (2) of this subsection, benefits may be retroactive a maximum of 90 days prior to the date on which the department receives a complete application (See §61.4 of this title (relating to Applications); however, such retroactive benefits will not extend prior to the date on which Texas residency was established or for more than 30 days before the date of the first dialysis or transplant surgery.

(2) Access surgery benefits for covered services may be retroactive for a maximum period of 120 days before the date on which the department receives a complete application; however, such retroactive benefits will not extend prior to the date on which Texas residency was established or for more than 120 days before the date of the first dialysis.

(i) Benefits for in-center dialysis recipients are available for covered medical services performed during the waiting period required for Medicare chronic renal disease coverage (pre-Medicare waiting period).

(j) Long-term benefits for medical care are extended to those recipients who do not qualify for Medicare coverage. Medicare denial must be documented by a copy of an official Social Security Administration denial notification acceptable to the department.

(k) Medicare Part A and B premiums may be paid by the program for those recipients that meet certain criteria.

(1) To be eligible for this benefit, recipients must meet the following criteria:

(A) they must be age 65 or over;

(B) they must not be eligible for "premium free" Part A coverage;

(C) they are not covered by a state "buy-in" agreement with the Texas Department of Human Resources (DHR). "Buy-in" occurs when Medicaid covers hospitalization (Part A) and DHR purchases Part B on behalf of their clients.

(2) If a recipient meets the criteria in paragraph (1) of this subsection, then they must take the following actions:

(A) apply through their local Social Security Administration office during the open-enrollment period (January through March, with effective date the following July, of each year); and

(B) sign an agreement for the program to purchase Medicare coverage in their behalf;

(C) when the premium billings are received from Medicare, submit them promptly to the program and the program will make payment directly to Medicare.

(l) Drug and transportation benefits are available for all program recipients regardless of their treatment mode.

(m) Transplant patients: Medical care benefits for Medicare noneligible recipients will terminate three years after a successful transplant; however, drug and transporta-

tion benefits will remain available as long as program eligibility is maintained.

(n) In the event a recipient is dialyzing at a participating facility that loses its program approval, the program will notify the recipient of this situation. The recipient will remain eligible for all program benefits except those benefits covering medical services which are provided under the contract between the department and the participating facility. To remain eligible for the benefits which cover these contracted medical services, the recipient must transfer to another outpatient dialysis facility that has a KHP approval. Recipient benefits normally provided under contract by an approved outpatient dialysis facility are not eligible for reimbursement while the recipient is dialyzing at a nonapproved facility.

(o) Overpayments made to or in behalf of recipients must be reimbursed to the department. Reimbursement may be made by lump sum payment or, at the department's discretion, out of the current claims due to be paid to or in behalf of the recipient. This will also apply to any person or persons who have a legal obligation to support the recipient and have received the overpayment. An opportunity for an administrative hearing, as provided in §61.7 of this title (relating to Denial of Application; Modification, Suspension, or Termination of Recipient Benefits), will be afforded to the recipient or person(s) responsible for support at their request.

§61.6. Documentation of Residency.

(a) Except as provided in subsection (c) of this section, an applicant may submit to the department for consideration the following documentary evidence of bona fide Texas residency: copies of three of the following documents, all in the applicant's name and current address:

(1) a current, valid Texas driver's license, or an identification card issued by the Texas Department of Public Safety;

(2) a complete copy (both sides) of a current, valid Texas voter's registration card;

(3) a current, valid Texas motor vehicle registration or automobile license plate registration renewal form;

(4) one of the documents in this paragraph may be used:

(A) a warranty deed or deed of trust to the applicant's abode;

(B) mortgage payment receipts from two of the three months immediately preceding the date of the application;

(C) rent payment receipts from two of the three months immediately preceding the date of the application;

(D) utility payment receipts from two of the three months immediately preceding the date of the application;

(5) a current, valid Texas Medicaid card;

(6) current Texas AFDC records;

(7) Texas property tax receipts for the most recently completed tax year;

(8) one of the documents in this paragraph may be used:

(A) two of the three most recent payroll or retirement checks received within the three consecutive months immediately preceding the date of application;

(B) employment/unemployment records;

(C) a statement from a financial institution;

(9) one of the documents in this paragraph may be used:

(A) a complete copy of United States Immigration and Naturalization Service (INS) Form I-151 or Form I-551 (Alien Registration Receipt Card);

(B) a copy of the applicant's most recent change of status application, as submitted to INS, and updated every six months;

(C) a complete copy of the forms issued to the applicant by INS as evidence of lawful temporary entry into the United States. Such forms may include but are not limited to Form I-90, Form I-94, Form I-120, or Form I-181, and these must be renewed every six months.

(b) If three of the documents listed in subsection (a) of this section cannot be provided, then copies of two of the documents listed in subsection (a) of this section may be provided along with a copy of one of the following documents (it must support Texas residency):

(1) a Texas birth certificate;

(2) military service separation records (entry into service from Texas address or separation to a Texas address);

(3) school records;

(4) most recent medical records that contain the applicant's name and current address, other than Form HCFA 2728-U4;

(5) Texas baptismal certificate.

(c) If the requirements of subsection (a)(1)-(8) of this section cannot apply to the applicant, an applicant seeking admission to the program as a bona fide resident under §61.5(5), (6), or (7) of this title (relating to Residency) may submit documentation for consideration as follows:

(1) documents relating to and in the name of the applicant's spouse, parent(s), managing conservator(s), or guardian(s); or

(2) a combination of documents relating to and in the name of either the applicant and/or the applicant's spouse, parent(s), managing conservator(s), or guardian(s).

(d) Applications submitted under subsection (c) of this section must also include documentary evidence of the relationship upon which the submission rests as illustrated by, but not limited to, the following:

(1) a marriage license or declaration of nonceremonial marriage to document the marriage of the applicant and spouse;

(2) the birth certificate showing the names of the parents of a minor;

(3) the judgment or other document reciting the appointment of the guardian for the minor or adult ward; or

(4) divorce decree naming the applicant's managing conservator.

(e) If there is a difference between the current name and address of the applicant and the name and address contained on any document submitted to support a determination of bona fide residency, the application must be accompanied by additional documentation as follows:

(1) for documents relating to residency that do not show the applicant's current address or show more than one address, a statement explaining the reason for the difference in the addresses;

(2) for documents relating to residency that show different names each of which is intended to signify the same individual, whether that individual is the applicant or an individual through whom the applicant is seeking to claim bona fide Texas residency, additional documents are required (such as a marriage license or a judgment from a court of competent jurisdiction) to explain the difference in the names shown.

§61.7. Denial of Application; Modification, Suspension, or Termination of Patient Benefits.

(a) Persons applying for or receiving benefits from the program will/may have their application denied or their benefits modified, suspended, or terminated for any of the following reasons.

(1) Benefits will be denied, modified, suspended, or terminated if:

(A) the person is not a bona fide resident of the state;

(B) the person fails or refuses to provide the periodic documentation of residency required in §61.6(b) of this title (relating to Documentation of Residency);

(C) the person does not have end-stage renal disease, regains kidney function, or voluntarily stops treatment for end-stage renal disease;

(D) the person fails or refuses to submit to the department a recipient financial status report for the purpose of determining reimbursement obligation;

(E) the person refuses to reimburse the department after being notified of third-party benefits, recipient reimbursement obligations, or program overpayments;

(F) the person notifies the program in writing that they no longer want to claim program benefits. Such a statement does not free the recipient, or persons with legal obligation to support the recipient, of any reimbursement obligation owing the program at the time of withdrawal;

(G) the person dies.

(2) Benefits may be denied, modified, suspended, or terminated if:

(A) the person submits an application form or any document required in support of the application which contains a misstatement of fact which is material to the department's determination that the person is eligible for program benefits;

(B) the recipient submits false claims to the program;

(C) the program has not paid a claim for benefits on behalf of the recipient during any period of 12 consecutive months;

(D) program funds are curtailed;

(E) funds allocated for payments on behalf of a recipient are exhausted.

(b) Procedures for the denial of applications or modification, suspension, or termination of benefits.

(1) Any applicant for or recipient of ' enefits from the program will be notified if their application may be denied or their benefits may be modified, suspended, or terminated. Notification will be by certified mail to the most recent address known to the program.

(2) These procedures do not apply to adjustments made by the program in the type of program benefits or the amount of benefits available when such adjustments are necessary to conform to budgetary limitations as provided in §61.3 of this title (relating to Payment of Program Benefits).

(3) Within 30 days after receiving the notice mentioned in this paragraph, the applicant/recipient notified or that person's authorized representative must respond to the program's notice with a written response to the program. The response must be by certified mail to the following address: Kidney Health Care Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Failure to respond will be deemed a waiver of the opportunity to respond to the program and a waiver of the opportunity for a hearing and the proposed action will become final.

(4) If the applicant/recipient does respond, upon receipt of the applicant's/recipient's response, the program will affirm or reverse its proposed action in writing to the applicant/recipient (by certified mail), giving the reason(s) for the decision.

(5) Any applicant/recipient aggrieved by the program's decision is entitled to appeal the decision to the Texas Department of Health. The appeal process will be in accordance with the hearing procedures as outlined in subsection (c) of this section. To initiate the appeal process, the applicant/recipient must notify the department, in writing, that he or she requests a hearing on the decision. The request must be by certified mail and must be received by the department within 10 working days from the receipt of the program's decision letter. Failure to provide written notice will be deemed a waiver of the opportunity for a hearing and the proposed action will become final.

(c) Hearing procedures.

(1) The hearing will not be conducted under the contested case provisions of the Administrative Procedure and Texas Register Act but will include the following:

(A) the department will set a date and time at the Texas Department of Health central office in Austin for the meeting;

(B) timely written notice to the applicant/recipient of the basis for the decision and disclosure of the evidence on which the decision is taken;

(C) an opportunity for the applicant/recipient to appear before an impartial decision maker to relate the basis for the decision;

(D) an opportunity for the applicant/recipient to be represented by counsel or another representative;

(E) an opportunity for the applicant/recipient or their representatives to be heard in person, to call witnesses, and to present documentary evidence;

(F) an opportunity for the applicant/recipient to cross-examine witnesses; and

(G) a written decision by the impartial decision maker, setting forth the reasons for the decision and the evidence upon which the decision is based.

§61.8. Kidney Health Care Approved Outpatient Dialysis Facilities and Out-of-State Facilities.

(a) An approved outpatient dialysis facility is one that:

(1) has met all Medicare certification requirements;

(2) has been assigned a Medicare ESRD provider number;

(3) has entered into a contract with the department to participate in the Texas Kidney Health Care Program and agrees to cooperate with the program in accordance with Texas Civil Statutes, Article 4477-20, and the program rules adopted by the Texas Board of Health, and

(4) has submitted facility operation cost reports for the most recent fiscal year of operation, in a manner prescribed by the department, no later than 90 days after the close of the facility's fiscal year. A copy of the facility cost report, audited by Medicare, must be submitted within 30 days from the date of the final audited report;

(5) has authorized the department to conduct audits of its records, at reasonable time intervals, to determine the cost of providing services.

(b) The program approval date may not be earlier than the approval date granted by the Health Care Financing Administration for Medicare ESRD approval.

(c) Facilities under interim approval for Medicare participation also will be classified as interim approval by the program. Recipient claims will be held by the program until the facility is approved by HCFA; however, applications for program benefits will be processed for approval.

(d) The department may contract only with facilities located within the State of Texas. An exception to this requirement may be a situation where it is clearly a hardship or great risk for a program recipient to travel to an adequate medical facility in Texas when an out-of-state medical facility within 50 miles of the Texas border is closer. The out-of-state facility must meet all the requirements of this section for approved facilities within the State of Texas. A contract entered into with an out-of-state facility will be renewed provided all the requirements of this section are met and the department has determined that the hardship or great risk situation continues to exist.

§61.9. Denial, Modification, Suspension, or Termination of Facility Approval; Vendor Hold.

(a) The following are reasons for the denial, modification, suspension, or termination of program facility approval. A program approved outpatient dialysis facility or out-of-state facility will have its privilege to participate in the program denied, modified, suspended, or terminated if:

(1) the facility loses Medicare approval;

(2) the facility fails or refuses to enter into a contract with the department to participate in the program;

(3) the facility with interim approval from the program fails to get Medicare/HCFA approval;

(4) the contract between the facility and the department is terminated for any reason, including:

(A) facility fails to comply with terms of applicable contracts and fails to cure such failure within 30 days after receipt of written notice from the department;

(B) federal or state law, or other requirements, are amended or judicially interpreted so as to render fulfillment of the contract, on the part of either party, substantially unreasonable or impossible;

(C) the contracting parties are unable to agree upon any amendment which would therefore be needed to enable substantial continuation of the provision of recipient services contemplated in the contract;

(D) facility voluntarily withdraws from participation in the program by providing the department with 60 days' written notice;

(E) by mutual consent of the department and the facility.

(5) the facility fails or refuses to submit, in a manner prescribed by the department, information which is:

(A) requested by the department for the purpose of determining the facility's compliance with the provisions of the Texas Kidney Health Care Act or these program rules;

(B) requested by the department for the purpose of monitoring the facility's

performance under the contract between the facility and the department;

(C) required to be provided by the facility to the department under the terms of the contract between the facility and the department, as follows:

(i) cost reports: a copy of the applicable Medicare cost report (HCFA Form 265 or HCFA Form 2552, Supplemental Worksheet I, or their successors) for the fiscal year ending during the period covered by the contract. These copies are due within 90 calendar days after the close of the facility fiscal year. A copy of the facility cost report, audited by Medicare, must be submitted within 30 days from the date of the final audited report;

(ii) if the facility is a hospital, to provide the required RCC statement as outlined in §61.3(d)(3) of this title (relating to Payment of Program Benefits);

(iii) other reports as prescribed by the department;

(iv) changes in the facility's Medicare assignment policy and/or Medicare reimbursement rates as they occur;

(v) quarterly verification reports, which are forwarded by the department to each facility, for verification of recipients who are being treated by the facility and for whom benefits have been sought from or paid by the department;

(6) the facility submits false or misleading information to the department and the information is material to the department's determination that the facility is:

(A) approved to participate in the program;

(B) in compliance with the provisions of the Texas Kidney Health Care Act and the program rules; or

(C) in compliance with the provisions of the contract between the facility and the department;

(7) the facility fails to reimburse the program when overpayments have been made;

(8) the facility fails to reimburse the program where primary liability for payment of recipient claims has not been satisfied;

(9) the facility files false claims.

(b) Procedures for the denial, modification, suspension, or termination of program facility approval.

(1) The program shall notify the administrator by certified mail of its intent to deny, modify, suspend, or terminate program approval.

(2) Within 30 days after receiving this notice, the facility must respond to the program's notice with a written response to the program. The response must be by certified mail to the following address: Kidney Health Care Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Failure to respond will be deemed a waiver of both the opportunity to respond and of the opportunity for a hearing and the proposed action will become final.

(3) Upon receipt of the facility's written response, the program will affirm or reverse its proposed action in writing to the facility administrator by certified mail, giving the reason(s) for the decision.

(4) A facility aggrieved by the program's decision is entitled to appeal the decision to the Texas Department of Health. The appeal process will be the same as that set forth in §61.7(c) of this title (relating to Denial of Application, Modification, Suspension, or Termination of Patient Benefits).

(c) Vendor hold. If the department has reasonable cause to believe that a reason for the modification, suspension or termination of facility approval exists, the department may, without notice to the affected facility, withhold payments to the facility during the pendency of the administrative hearing and appeal process set forth in subsection (b) of this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 31, 1985.

TRD-857004 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 1, 1985
Proposal publication date: June 7, 1985
For further information, please call (512) 465-2654.

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Chapter 133. Hospital Licensing Standards

★25 TAC §133.21

The Texas Department of Health adopts an amendment to §133.21, without changes to the proposed text published in the June 7, 1985, issue of the *Texas Register* (10 TexReg 1852). However, changes have been made to the standards adopted by reference as addressed in the summary of comments.

The amendment will update the existing standards and make them more compatible with federal standards and accreditation entities whose participating hospitals have been granted deemed status under the Texas Hospital Licensing Law and offset the cost of the Hospital Licensing Program through increased fee collections.

The amendment updates standards concerning safety, fire prevention, and sanitary provisions that are followed in the design and construction of new hospitals and in renovations, modifications and additions to existing hospitals.

It was recommended that the words "and treatment rooms" be deleted from 2-1.1.3. The agency agrees in principle but prefers to change reference of section 7-2.1 to read "Chapter 7." (See 2-1.1.3. of the Hospital Licensing Standards.)

It was recommended that since highly combustible materials are required in the operation of hospitals, acceptable alternative locations for storage should be provided. The agency agrees and has made appropriate changes. (See 2-3.1.1. of the Hospital Licensing Standards.)

It was recommended that the word "approved" be combined with a reference to a recognized specification from a testing laboratory such as Underwriters' Laboratories or Factory Mutual. The agency agrees and will list in Appendix B all approved testing laboratories. (See 2-3.1.5. of the Hospital Licensing Standards.)

It was recommended that "authorities having jurisdiction" be added to the end of paragraph 2-4.1. The agency rejects the recommendation because the documentation is for the use by the hospital to establish a quality maintenance program as well as for the use of the authority having jurisdiction. (See 2-4.1. of the Hospital Licensing Standards.)

It was recommended that the term "approved safety measures" be replaced with a referenced standard. The agency agrees and has made the appropriate change to the standard. (See 2-5.1. of the Hospital Licensing Standards.)

It was recommended that the term "current edition" be defined. The agency agrees and the definition will be included in Appendix B. (See 2-5.1.1. of the Hospital Licensing Standards.)

A recommendation was received that 2-8.1.9. include prohibiting the use of portable electric heaters in areas where patients or visitors frequent and allow specially equipped heaters in other areas. The agency agrees with the recommendation but elects not to change the standard as it is covered under the National Fire Protection Association (NFPA) 101, Life Safety Code. (See 2-8.1.9. of the Hospital Licensing Standards.)

It was recommended that emergency lighting levels and locations be specified. The agency rejects the recommendation because emergency lighting is already covered in the standards. (See 2-9. of the Hospital Licensing Standards.)

It was recommended that the standards address handicap requirements specifically in water closets. The agency rejects the recommendation because the subject was addressed in Chapter 4. However, the agency has added the Handicapped Accessibility Act of Texas to the reference listing in Chapter 10. (See 2-10 of the Hospital Licensing Standards.)

It was recommended that the wording from NFPA 101, 13-1.1.5.1. be used regard-

ing conditional approval for nonconforming conditions. The agency rejects this recommendation as these standards pertain not only to Life Safety Code, but construction and functional requirements as well that are not covered in NFPA 101. (See 3-3.1. of the Hospital Licensing Standards.)

It was recommended that a codes and standards appendix be included in the standards, including provisions for periodical updating. The agency disagrees as Chapter 10 was included for that purpose in the standards, and the Texas Hospital Licensing Law makes provisions for updating the standards. Also, additional clarification has been included in Chapter 4, identified as 4-1.1.4. through 4-1.1.6. (See 4-1.1.1. of the Hospital Licensing Standards.)

It was recommended that the standards address deletions in construction projects. It is the opinion of the agency that deletions and alterations are considered one and the same and are addressed in Chapters 3 and 4. (See 5-1.1.2. and 5-1.1.3. of the Hospital Licensing Standards.)

It was recommended that the number of copies of plans and specifications required for submittal be addressed. The agency agrees and has incorporated this into the standards. (See 5-2.1. and 5-2.2. of the Hospital Licensing Standards.)

It was recommended that submittal of building sections be required only for new construction. The agency rejects this recommendation. In many situations, it is the only method of establishing construction types and applicable codes. (See 5-2.1.5. of the Hospital Licensing Standards.)

It was recommended that locations and dimensions of pipe sleeves be deleted from the plans submitted for review. The agency rejects this recommendation. The intent of this section is to identify floor openings which may require special fire protection requirements as listed in NFPA 101. (See 5-2.2.3. of the Hospital Licensing Standards.)

It was recommended that fast track projects be submitted in other than the specified method of these standards. The agency rejects this recommendation as the agency's limited budget, time limitations, and minimal drawings necessary to review a project would dictate the submittal as listed under 5-2.3. (See 5-2.3.1. and 5-2.3.1.1. of the Hospital Licensing Standards.)

It was recommended that the standards include provisions for "conditional starts," and placing a time frame for review and comments by the agency. The agency rejects this recommendation as partial approval of a project without having a complete set of drawings would place a severe liability on the agency. Putting a time frame on the plan review process is unrealistic in the fact that the number of agency personnel and the number of projects will vary at any one period of time. (See 5-3.1. of the Hospital Licensing Standards.)

It was recommended that the agency identify the responsible parties regarding progress report submittal. The agency agrees and has replaced "as needed" with "as required by the licensing agency." A sentence has been added stating that the progress reports are the responsibility of the hospital/owner. (See 5-3.1.2. of the Hospital Licensing Standards.)

It was recommended that the Texas Department of Health review the extent of the responsibilities implied by this paragraph for verifying compliance with the "plans and specifications." The agency agrees and has replaced the words "plans and specifications" with "approved plans." (See 5-3.1.4. of the Hospital Licensing Standards.)

It was recommended that the word "appropriate" be deleted from this paragraph. The agency agrees and has made the change to the standards. (See 5-3.1.5. of the Hospital Licensing Standards.)

It was recommended that the words "or local standards" be added to 6-4.2. The agency agrees and has added the words to the standards. (See 6-4.2. of the Hospital Licensing Standards.)

It was recommended that three feet eight inches clearance at the end of the patient bed be increased. The agency rejects the recommendation because these are minimum standards. (See 7-2.1.1. of the Hospital Licensing Standards.)

It was recommended that paragraphs 7-2.2.4. and 7-2.2.14. be combined. The agency rejects this recommendation. One pertains to handwashing facilities, the other to spacial requirements. (See 7-2.2.4. and 7-2.2.14. of the Hospital Licensing Standards.)

It was noted that there may be a duplication of requirements for multipurpose room(s). The agency agrees and has deleted the requirements for two multipurpose rooms in 7-2.2.9. and in 7-2.2.10. To prevent complete change to numerical references throughout the document, the agency has relocated one of the listed equipment requirements for the nourishment station from 7-2.2.16 to 7-2.2.9. The new listing shall be "Ice Machine" and is included in the standards. (See 7-2.2.9., 7-2.2.10. and 7-2.2.16 of the Hospital Licensing Standards.)

It was recommended that the Intensive Care Unit special requirements for three feet 0 inches clearance at the head wall be deleted. The agency rejects this recommendation because this requirement does not pertain to single bed rooms and it is only applicable to multi-bed rooms or suites. (See 7-3.1.1. of the Hospital Licensing Standards.)

It was recommended that the standards address the number of bassinets in special care nurseries. The agency agrees and has addressed the issue in the standard. (See 7-5.1.5. of the Hospital Licensing Standards.)

It was recommended that natural light for seclusion rooms be left to owner's discretion. The agency rejects the recommendation. Natural light for seclusion rooms is a requirement under present Texas Department of Mental Health and Mental Retardation standards and has been included to provide uniformity for both standards. (See 7-7.4. of the Hospital Licensing Standards.) It was recommended that in lieu of the square footage stated in 7-8.2., that the minimum clear area of operating rooms exclusive of fixed cabinets and built-in shelving be 400 square feet with a minimum dimension of 20 feet 0 inches. The agency rejects the recommendation because these standards contain only minimal requirements. (See 7-8.2. of the Hospital Licensing Standards.)

It was recommended that clarifications be provided for the emergency communication system. The agency believes the standard has been adequately addressed under 9-5. Nurse Call Systems. (See also 7-8.2.1., 7-9.3. and 7-31.10.1. of the Hospital Licensing Standards.)

It was recommended that the use of the word "routinely" be defined or changed. The agency agrees and has deleted the word "routinely" from the standard. (See 7-9.3. of the Hospital Licensing Standards.)

It was recommended that the required shower ratios for labor beds be reduced or deleted. The agency rejects this recommendation because the ratio used in the standards is an established criteria used throughout the country. (See 7-9.4.4. of the Hospital Licensing Standards.)

It was recommended that birthing rooms not be required to meet the same standards for mechanical ventilation as delivery rooms listed in Table 8-4. The agency rejects the recommendation because criteria is based on federal guidelines and good engineering practices recommended by the American Society of Heating, Refrigeration, Air-Conditioning Engineers (ASHRAE). (See 7-9.5. of the Hospital Licensing Standards.)

It was recommended that trauma center standards be added. The agency disagrees but will take the recommendation under advisement in future addendums. (See 7-10.3. of the Hospital Licensing Standards.)

It was recommended that the size of exam treatment rooms be increased. The agency rejects the recommendation because these standards contain only minimal requirements. (See 7-11.3.1. of the Hospital Licensing Standards.)

It was recommended that the requirement of enclosing the soiled dish room from food preparation areas be deleted. The agency rejects the recommendation because good sanitation practices and federal standards do recommend that the soiled dish room be separated from the food preparation area. (See 7-19.4.3. of the Hospital Licensing Standards.)

It was recommended that section 7-30 be reorganized. The agency feels that the recommendation is too vague for response. (See 7-30. of the Hospital Licensing Standards.)

It was recommended that a clear definition be given of what door sizes are permitted to swing into the exit corridor. The agency disagrees that a definition is necessary because doors permitted to swing into corridors are included under sections 7-30.1.4. and 7-30.1.9. (See 7-30.1.4. and 7-30.1.9. of the Hospital Licensing Standards.)

It was recommended that the phrase "Exit access doors" be clarified. The agency rejects the recommendation as exit access doors are defined under NFPA 101, as is referenced in this section. (See 7-30.1.7. of the Hospital Licensing Standards.)

It was recommended that the door width for handicap facilities be made two feet 10 inches in lieu of three feet 0 inches. The agency disagrees as the Handicapped Accessibility Act of Texas requires both the 32-foot clear opening and 36 foot width doors; therefore, the 36-foot door will satisfy all conditions of the Handicapped Accessibility Act of Texas. (See 7-30.1.7. of the Hospital Licensing Standards.)

It was recommended that 7-30.1.23. and 7-30.2.8. are redundant and that one be deleted. The agency disagrees as 7-30.2.8. pertains to noise transmission and 7-30.1.23. pertains to thermal insulation between floors. (See 7-30.1.23. and 7-30.2.8. of the Hospital Licensing Standards.)

It was recommended that the terms "readily cleanable" and "daily housekeeping activities" need to be defined more clearly. The agency agrees and has rewritten this portion of the standards. (See 7-30.2.7. of the Hospital Licensing Standards.)

It was recommended that clarification of special provisions for designing for natural catastrophies be addressed. The agency disagrees as the standards have included building codes referenced in 10-1 which address these issues. For added clarification, a reference to 10-1 has been added to 7-31.10.2. (See 7-31.10.2. of the Hospital Licensing Standards.)

A recommendation was received that cars of hospital type elevators be eight feet three inches instead of the proposed seven feet six inches deep. The agency rejects this recommendation because these standards contain only the minimal requirements. (See 7-32.1.2. of the Hospital Licensing Standards.)

It was recommended that material lists and instructions for mechanical equipment be deleted from the standards or include all other equipment as well. The agency rejects this recommendation as this requirement is needed to properly instruct hospital staff in maintaining and repairing the equipment during normal operations and in emergency situations. Other equipment is covered in the appropriate sections of the standards. (See 8-1.3. of the Hospital Licensing Standards.)

It was recommended that references to the 1981 Life Safety Code in the Hospital Licensing Standards be changed to reference the 1985 edition of the Life Safety Code. The agency rejects this recommendation at this time, but may implement the change when the 1985 Code is adopted by federal and accreditation agencies upon approval by the Texas Board of Health. (See Chapter 10 of the Hospital Licensing Standards.)

It was recommended that the standards have a time limit or expiration date. The agency agrees in part. The effective date will be specified in Chapter 1 and on the cover as September 1, 1985. The expiration date cannot be established at this time. The item will be addressed at a future date. (See 10-2.1. of the Hospital Licensing Standards.)

It was recommended that the filter efficiency requirements listed in Table 8-2 be reduced in certain areas. The agency disagrees as these standards are based on good engineering practices recommended by American Society of Heating, Refrigeration, Air-Conditioning Engineers (ASHRAE) and are included in the Guidelines for Construction and Equipment of Hospital and Medical Facilities, published by the U.S. Department of Health and Human Services (HRS-M-HF)84-1. (See Table 8-2 of the Hospital Licensing Standards.)

It was recommended that the cost estimate of $105 per square foot used to calculate review fees be deleted. The agency disagrees. It is the opinion of this agency that the only equitable way to establish a fee for service is the square foot method when no other cost estimates are available at the time of review. (See Appendix C of the Hospital Licensing Standards.)

It was recommended that the number of inspections be established at the Stage I review. The agency disagrees that the maximum number of inspections can be established at the time of Stage I review. (See Appendix C of the Hospital Licensing Standards.)

It was recommended that all operations requirements be included in Chapter 1. The agency rejects the recommendation because the importance of the requirement makes it necessary to include operational requirements in both Chapter 1 and the rest of the standards.

It was recommended that the standards address an overall time frame for approving specific projects which will be constructed over an extended period of time. The agency rejects the recommendation because each project will be reviewed under the current edition of the standards in effect at the time construction approval is granted. The agency has no control over changes in local, state or federal laws.

It was recommended that the standards provide an appeal process for noncompliance with these standards and identify the final authority for enforcement of the standards. The agency disagrees that final authority has not been established. The Texas Hospital Licensing Law gives the authority to the Licensing Agency which is the Texas Department of Health. Sections have been added to Chapter 4 which allow the Licensing Agency certain flexibilities in applying the standards.

It was recommended that energy conservation measures be applied to existing and future constructed hospitals. The agency takes exception. This issue has been addressed in Chapter 8. The overall method of achieving energy conservation is the responsibility of each hospital.

It was recommended that a special category be included for ambulatory hospitals. The agency agrees in principle and will address specialty hospitals in Chapter 1 of the Hospital Licensing Standards. Ambulatory or outpatient care facilities are addressed in Chapter 7 and section 7-11. A licensing law for freestanding ambulatory surgical centers was passed during the last legislative session, and separate standards covering these facilities are being developed.

Those groups making comments were Medical Center Hospital, AC Associates, Methodist Hospital, FMB and Associates, Texas Society of Architects Committee on Architecture for Health, Texas Hospital Association, a member of the Statewide Health Coordinating Council, and a member of the staff of the Hospital and Professional Licensure Division of the Texas Department of Health.

The associations, hospitals, and architectural groups were generally supportive of the standards with reservations about specific portions. Some commenters had questions and requests for clarifications.

Several commenters objected to the fees for service proposals. The legislature amended the Texas Hospital Licensing Law to incorporate these fees. Therefore, the agency cannot change the fee concept.

The amendments are adopted under Texas Civil Statutes, Article 4437f, §5,

which provide the Texas Board of Health with the authority to adopt minimum standards on safety, fire prevention, and sanitary conditions in hospitals in Texas.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 31, 1985.

TRD-857003 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 1, 1985
Proposal publication date: June 7, 1985
For further information, please call (512) 458-7531.

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 403. Other Agencies and the Public

Subchapter C. Collection for Support, Maintenance, and Treatment of Clients

★25 TAC §§403.71-403.90

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §§403.71-403.90, without changes to the proposed text published in the July 2, 1985, issue of the *Texas Register* (10 TexReg 2153.

The repeal is adopted contemporaneously with the adoption of new Subchapter C, concerning determination of rates for support, maintenance, and treatment of clients.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes Article 5547-202, §2.11(b), which provides the commissioner with the authority to promulgate rules subject to the basic and general policies of the Texas Board of Mental Health and Mental Retardation.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 6, 1985.

TRD-857109 Gary E. Miller
Commissioner
Texas Department of Mental Health and Mental Retardation

Effective date: August 27, 1985
Proposal publication date: July 2, 1985
For further information, please call (512) 465-4670.

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Subchapter C. Determination of Rates for Support, Maintenance, and Treatment of Clients

★25 TAC §§403.71-403.76

The Texas Department of Mental Health and Mental Retardation adopts new §§403.71-403.76, without changes to the proposed text published in the July 2, 1985, issue of the Texas Register (10 TexReg 2154).

The new sections describe the method for determining rates for support, maintenance, and treatment for clients receiving inpatient and residential services at facilities of the Texas Department of Mental Health and Mental Retardation. It is adopted contemporaneously with the adoption of the repeal of Chapter 403, Subchapter C, relating to collection for support, maintenance, and treatment of clients.

No comments were received regarding adoption of the new rules.

These new sections are adopted under Texas Civil Statutes Article 5547-202, §2.11(b), which provides the commissioner with the authority to promulgate rules subject to the basic and general policies of the Texas Board of Mental Health and Mental Retardation.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 6, 1985.

TRD-857108 Gary E. Miller
Commissioner
Texas Department of Mental Health and Mental Retardation

Effective date: August 27, 1985
Proposal publication date: July 2, 1985
For further information, please call (512) 465-4670.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 116. Permits

★31 TAC §116.1, §116.10

The Texas Air Control Board adopts amendments to §116.3 and §116.10, with changes to the proposed text published in the March 29, 1985, issue of the *Texas Register* (10 TexReg 1064). Sections 116.1 and 116.2 are adopted without changes and will not be republished.

The amendments to §116.1, concerning construction permits, are administrative only in that new wording guides the reader to the appropriate sections to determine whether a facility is required to obtain a permit to construct or be considered an exempt facility. In addition, the title of §116.1 now reads "Permit Requirements" instead of "Construction Permits" since the section has a broader application than just permits to construct.

The amendments to §116.2, concerning responsibility for obtaining a permit or exemption, likewise are administrative only in that they simplify the old language while retaining the same intent.

The amendments to §116.3, concerning consideration for granting permits to construct or operate, adds a new paragraph (13) to §116.3(a) to incorporate by reference portions of the federal prevention of significant deterioration (PSD) regulations promulgated at 40 Code of Federal Regulations (CFR) §52.21, by the U.S. Environmental Protection Agency (EPA). By incorporating the federal PSD regulations into §116.3(a), the Texas Air Control Board (TACB) becomes eligible to receive full delegation of authority from EPA to administer the PSD permitting program in Texas. This action, if approved by the EPA, will consolidate the PSD and TACB permitting programs into one consolidated system.

This incorporation by reference also is designed to satisfy the new source review requirements for protection of visibility in the federal Class I areas of Texas, Big Bend National Park, and Guadalupe Mountains National Park. The federal rules which address the impact of a new or modified source on visibility in Class I areas are contained in 40 CFR §52.21(p).

Three sections of the federal PSD regulations are being excluded from incorporation by reference. They are 40 CFR §52.21(j), concerning control technology review; 40 CFR §52.21(l), concerning air quality models; and 40 CFR §52.21(q), concerning public notification. Justification for excluding these sections is discussed within the evaluation of testimony.

The amendments to §116.10, concerning public notification and comment procedure, include the two changes. The newspaper notice size specified in §116.10(a)(4) is altered to conform to column sizes now being used by most newspapers in Texas and §116.10(d), public notification is now required for new determinations of best available control technology (BACT) made under §116.7, concerning special permits, and the time period for notification of new BACT determinations is now 60 days after permit issuance.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(C)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categor-

ized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

No comments were received regarding the amendments to §116.1 and §116.2.

Eleven commenters testified concerning the proposed amendments to §116.3. Those commenting in favor were the Texas Chemical Council (TCC), Texaco USA, the Sierra Club Lone Star Chapter, Diamond Shamrock Chemicals Company, and Texas Utilities Generating Company (TUGCO). Those commenting against the proposal were Brandt Mannchen, the EPA, Exxon Company U.S.A., the Gas Processors Association (GPA), Central and South West (CSW) Services, Inc., and the National Park Service (NPS).

Eight commenters testified concerning the proposed amendments to §116.10 Those commenting in favor were Brandt Mannchen and the Sierra Club. Those commenting against the proposal were TCC, Texaco, Exxon, GPA, Diamond Shamrock, and TUGCO.

A complete summary of comments and a discussion of issues will follow. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 6330 U.S. Highway 290 East, Austin, Texas 78723. Testimony received concerning the amendments has been divided into two sections that cover comments on the changes to §116.3 and comments on the changes to §116.10.

The proposed change to §116.3 involved the addition of a new paragraph (13) to incorporate by reference the federal PSD regulations as published in the *Federal Register*, 40 CFR §52.21, except for four paragraphs. Remarks received from TCC, Texaco, Exxon, the Sierra Club, GPA, Diamond Shamrock, TUGCO, and CSW Services addressed individual preferences for excluding versus adopting one or more of the four. In addition, the EPA suggested some word changes in the proposed use of the terms "executive director" and "administrator." A mutual understanding between the EPA staff and TACB staff has resulted in the agreed use of "administrator or executive director" in 40 CFR §52.21(b)(3)*(iii)* and in 40 CFR §52.21(p)(2). A sentence has been added to §116.3(a)(13) specifying these two exceptions.

The EPA questioned the state's ability to require BACT analysis for significant increases of noncriteria pollutants resulting from major modifications if 40 CFR §52.21(j), concerning control technology review, is excluded from the adoption by reference. The Texas Clean Air Act Requires the TACB to perform a BACT analysis for all pollutants, including those from major source modifications. No change in state rules is needed to provide for this type of review

The EPA questioned the permitting of and BACT analysis for phased construction projects in Texas. Texas has no specific rules to address phased construction projects. However, the TACB has the authority to issue different permits for the facilities to be constructed in each phase of a phased construction project. Each of these permits, then, is reviewed if construction of the facilities is not begun within a specified period of time.

The second federal PSD provision excluded from the adoption by reference is 40 CFR §52.21(1), concerning air quality models. The TCC, CPA, Diamond Shamrock, and TUGCO supported the exclusion of paragraph (1) from the adoption and, thus, supported the continued use of the TACB air quality models for PSD permit review. The EPA stated that the Texas models are allowed for use until such time as they are removed from the *Guideline on Air Quality Models*. The EPA has proposed, December 7, 1984, to remove the Texas models from the guidelines, but final decisions on this matter are not expected until spring 1986. Exclusion of paragraph (1) from the adoption by reference will allow the continued use of the TACB models.

Public notification requirements in 40 CFR §52.21(q) were proposed for exclusion, because public notification and comment procedures currently are addressed in §116.10 and §103.31 of the TACB rules. The EPA contended that several PSD plan requirements would not be met if paragraph (q) is not incorporated by reference into §116.3.

Specifically, the EPA commenter stated that the TACB procedures, as provided in §116.10, do not meet all the requirements of 40 CFR §51.24(q)(1), concerning public participation for PSD. The first deficiency noted by the EPA was the lack of a specific time period during which the TACB must notify an applicant of completeness of incompleteness of the application. The current §116.10(a) contains no time limit within which the TACB must notify an applicant of the completeness or incompleteness of an application. However, in reality, the TACB permit review process requires the expeditious review of each permit application by a TACB permit engineer and prompt notification to the applicant of any deficiencies found in the application. The current TACB procedures satisfy the spirit and intent of 40 CFR §51.24(q)(1).

Further, the EPA commented that the public participation procedures of §116.10 lack the requirements stated in 40 CFR §51.24(q)(2), concerning time limits for notifying an applicant of a preliminary determination after the application is complete. The March 29, 1985, TACB proposal contained no such time limit. As discussed under §116.10, that part of the proposal is recommended for withdrawal from consideration based on review of testimony. The effect of this withdrawal would be to keep the current provision for a preliminary determination to issue or deny a permit to be issued within 30 days of receipt of a complete application.

The current provisions of §116.10, therefore, address all parts of 40 CFR §51.24(q)(2), except paragraphs (q)(2)*(v)*. With regard to 40 CFR §51.24 (q)(2)*(vii)*, a parenthetical clause has been added to §116.3(a)(13) to clarify that the federal requirement for a permit to be issued or denied within one year must be satisfied. The adoption by reference of 40 CFR §52.21(q), therefore, is not justified on those grounds, and the exclusion of paragraph (q) from the adoption was supported by TCC, Texaco, Exxon, GPA, Diamond Shamrock, and TUGCO.

The fourth federal PSD provision proposed for exclusion was 40 CFR §52.21(r)(2), concerning voiding a permit due to either an 18-month delay in commencement of construction or to an 18-month discontinuation of construction. All TACB-issued construction permit contain a 12-month limit on commencement of construction, and the TACB has no limitation on discontinuation of construction. The March 29, 1985, TACB proposal did not contain any provision for voiding construction permits due to periods of discontinued construction, but, it did contain a request for comments on the advisability of such a policy.

The Sierra Club supported the TACB 12-month limit for construction start-up and suggested the adoption of a 12-month limit to construction interruptions. Exxon, GPA, and CSW Services recommended adoption of 40 CFR §52.21 (r)(2) in order to set an 18-month limit in both cases. The TUGCO supported the 18-month limit for construction start-up with no limit on discontinued construction and recommended the adoption of the EPA definition of "start up of construction" to allow an applicant more time after permit issue for the on-site start of construction. The TACB experience in issuing permits has shown that, in most instances, actual construction on the project can begin within 12 months of receipt of the permit A permit holder needing more than 12 months to start construction may apply to the TACB for an extension of the time period. However, incorporation of subsection (r)(2) into §116.3 will provide the additional time supported by several commenters and should result in a reduced administrative burden to the TACB by reducing the number of permit extensions required.

A time limit for interruptions to construction was mentioned by seven commenters. Brandt Mannchen, the EPA, and the Sierra Club supported a 12-month limit, TUGCO proposed that construction interruptions have no time limit, and Exxon, GPA, and CSW Services supported an 18-

month limit. The EPA indicated that the Texas Prevention of Significant Deterioration State Implementation Plan (PSD SIP) should contain a provision for the voiding of a permit due to discontinuation of construction in order for the PSD SIP to be approvable. The EPA suggested either a provision be added to the PSD construction permit or a requirement be placed in the TACB rules. Adoption of 40 CFR §52.21(r)(2) by reference will satisfy this EPA requirement and provide a time limit for interruptions of construction as supported by most other commenters.

The EPA also stated that incorporation of the definitions included in 40 CFR §52.301, is necessary for §116.3(a)(13) to be approvable as the Texas visibility new source review plan. These definitions clarify the meanings of terms used in 40 CFR §52.21(p). Expansion of the proposed incorporation by reference of 40 CFR §52.21, to include the definitions at 40 CFR §51.301, will satisfy this EPA requirement.

The March 29, 1985, proposed changes to §116.10(a)(1), concerning general requirements of public notification procedures, included a restructuring of the paragraph into two subparagraphs, one addressing TACB construction permit and the other addressing PSD permits. The first subparagraph retained the current provisions concerning TACB permits and referred the reader to the new subparagraph if PSD requirements apply. The proposed subparagraph for PSD permits allowed more than 30 days after receipt of a completed PSD permit application for the TACB to make preliminary determination to issue or deny a permit. This additional time was thought to be necessary for the TACB staff to complete the review and atmospheric dispersion modeling required by the proposed §116.3 (a)(13).

The TCC, Texaco, GPA, Exxon, Diamond Shamrock, and TUGCO addressed the issue of unlimited time to be allowed for the TACB to make a preliminary determination to issue or deny a PSD permit. All six opposed the proposal and some offered alternatives in the form of specific time limits for the preliminary determination. Although satisfaction of all PSD review requirements will be difficult within a specified time frame, the staff has concluded that a preliminary determination to issue a PSD permit can be made accurately within the 30-day period following determination of completeness of the application. The withdrawal of the proposed changes to §116.10(a)(1) will result in no changes to the current provisions of the paragraph which will apply to PSD permits and state permits alike.

Revisions to §116.10(a)(4), concerning publication elsewhere in the newspaper, change the specified newspaper notice dimensions to conform to column sizes now being used by most newspapers in Texas. The only comments received supported the proposal.

The proposed revisions to §116.10(d), concerning notification of new determination as to best available control technology (BACT) added a requirement for public notification of new determinations of BACT made under §116.7, concerning special permits. Also, the proposal changed the time period for notification from 15 days prior to the issue of a permit to 30 days following the issue of a permit.

The TCC and GPA addressed specific comments toward this section of the proposed revisions. Both disagreed with the proposed indefinite time period allowed for the TACB to notify the public of new determinations of BACT. The proposal specified publication of a notice in the *Texas Register* at least 30 days after permit issue. The intent was to require publication as soon as practicable after permit issue. In response to the two requests for a specific time limit and after consideration of the administrative processing time needed to submit a notice for publication in the *Texas Register*, the TACB has decided to establish a 60-day limit for publication of the new BACT determinations.

These amendments are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provides the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§116.3. Consideration for Granting Permits to Construct and Operate.

(a) Permit to construct. In order to be granted a permit to construct, the owner or operator of the proposed facility shall submit information to the Texas Air Control Board which will demonstrate that all of the following are met:

(1)-(12) (No change.)

(13) The proposed facility shall comply with the prevention of significant deterioration of air quality regulations promulgated by the Environmental Protection Agency in the Code of Federal Regulations (CFR), at 40 CFR §52.21, as amended and the definitions for protection of visibility promulgated at 40 CFR §51.301, hereby incorporated by reference, except for the following paragraphs: 40 CFR §52.21(j), concerning control technology review; 40 CFR §52.21(l), concerning air quality models; and 40 CFR §§52.21(q), concerning public notification (provided, however, that a determination to issue or not issue a permit shall be made within one year after receipt of a complete permit application so long as a contested case hearing has not been called on the application.) The term "executive director" shall replace the term "administrator" except in 40 CFR §52.21 (b)(17), (f)(1)(v), (f)(3), (f)(4), (g), and (t). "administrator or executive director" shall replace "administrator" in 40 CFR §52.21 (b)(3)(iii) and "administrator" and "executive director" shall replace "administrator" in 40 CFR §52.21(p)(2). Copies of 40 Code of Federal Regulations (CFR) §52.21, and 40 CFR §51.301 are available upon request from the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

(b)-(f) (No change.)

§116.10. Public Notification and Comment Procedure.

(a) Public notification procedures.

(1) General requirement. Within 30 days of receipt of a completed construction permit application, as determined by the executive director of the Texas Air Control Board, the executive director shall mail a written notification to the permit applicant acknowledging receipt of the application, stating his preliminary determination to issue or not issue the permit, and requiring the applicant to provide public notice of the proposed construction which shall include the information specified in paragraph (3) of this subsection. The applicant shall provide such notification using each of the methods specified in paragraphs (3) and (4) of this subsection. The executive director may specify that additional information needed to satisfy public notice requirements of 40 Code of Federal Regulations (CFR) §52.21, also be included in the notice published pursuant to paragraph (3) of this subsection.

(2)-(3) (No change.)

(4) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches) and whose shortest dimension is at least 7.6 centimeters (three inches) shall be published in a prominent location elsewhere in the same issues of the newspaper and shall contain the information specified in paragraph (3)(A)-(D) of this subsection and note that additional information is contained in the notice published pursuant to paragraph (3) of subsection in the public notice section of the same issue.

(5)-(6) (No change.)

(b)-(c) (No change.)

(d) Notification of new determinations as to best available control technology. If the requirements of any permit to construct will incorporate a new determination of best available control technology pursuant to §116.3(a)(3) of this title (relating to Consideration for Granting Permits to Construct and Operate) or §116.7(e)(3) of this title (relating to Special Permits), the executive director shall so notify the public by publication of a notice in the *Texas Register* within 60 days after the issuance of any such permit.

(e) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal

counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 6, 1985.

TRD-857144 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Effective date: August 28, 1985
Proposal publication date: March 29, 1985
For further information, please call (512) 451-5711, ext. 354.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part X. Texas Adult Probation Commission

Chapter 323. Fund Distribution

★37 TAC §323.3

The Texas Adult Probation Commission adopts amendments to §323.3, without changes to the proposed text published in the June 21, 1985, issue of the *Texas Register* (10 TexReg 2067).

During the last session of the legislature, a rider was attached to the Texas Adult Probation Commission appropriation pattern which requires all surplus state funds to be returned to the agency.

This section serves as information to the local probation departments and explains the procedure which the Adult Probation Commission will use to determine the amount of state funds to be returned to the agency at the end of each fiscal year.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Code of Criminal Procedure, Article 42.121, §3.01, which provides the Texas Adult Probation Commission with the authority to promulgate reasonable rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 5, 1985.

TRD-857078 David Spencer
General Counsel
Texas Adult Probation Commission

Effective date: August 26, 1985
Proposal publication date: June 21, 1985
For further information, please call (512) 834-8188.

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TITLE 40. SOCIAL SERVICES ASSISTANCE

Part III. Texas Commission on Alcoholism

Chapter 153. DWI Education Program Standards and Procedures

DWI Education Program Procedures

★40 TAC §§153.1, 153.4-153.6, 153.32, 153.33, 153.36, 153.38, 153.41, 153.42

The Texas Commission on Alcoholism adopts amendments to §§153.1, 153.4-153.6, 153.32, 153.33, 153.36, 153.38, 153.41, and 153.4, without changes to the proposed text published in the July 5, 1985, issue of the *Texas Register* (10 TexReg 2187).

These amendments are necessary due to statutory requirement changes resulting from the passages of Senate Bills 601, 550, and 589 and clarify further the intent of standarization and uniformity in all DWI education programs.

The amendments formally change the name of the administrative agency for the statewide DWI Education Program and include the new statute under which the education requirement is found. The amendments assure that uniformity in DWI education programming is continued throughout the state.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Code of Criminal Procedure, Article 42.13, §6, which authorizes the the Texas Commission on Alcoholism to publish the jointly approved rules and regulations for approved DWI education programs and the authority to coordinate and monitor the approved educational programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 5, 1985.

TRD-857145 Christine Delmas
Staff Attorney
Texas Commission on Alcoholism

Effective date: September 1, 1985
Proposal publication date: July 5, 1985
For further information, please call (512) 475-2577.

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Part V. Veterans Land Board

Chapter 177. Veterans Housing Assistance Program

★40 TAC §177.3, §177.8

The Veteran's Land Board adopts amendments to §177.3 and §177.8, without changes to the proposed text published in the February 15, 1985, issue of the *Texas Register* (10 TexReg 567).

In addition to being able to purchase a home through the Housing Assistance Program, eligible veterans will be able to get a home improvement loan through the program.

The amendments authorize the veteran's housing assistance funds to be used for home improvement loans.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Natural Resources Code, §162.003, which authorizes the board to adopt rules governing the making or acquiring of veteran's housing assistance loans.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 6, 1985.

TRD-857140 Garry Mauro
Chairman
Veterans Land Board

Effective date: August 28, 1985
Proposal publication date: February 15, 1985
For further information, please call (512) 475-5061.

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Board of Architectural Examiners

Friday, August 23, 1985, 9 a.m. The Texas Board of Architectural Examiners will meet in Suite 107, 8213 Shoal Creek Boulevard, Austin. Items on the agenda include the approval of minutes, group insurance, revocation hearings concerning architects, examinations, deans of the schools of architecture, the Intern Development Program, board policy statements, rules and regulations, reinstatements, reciprocal licensing, legislation, alleged violations, and renewals.

Contact: Robert H. Norris, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758, (512) 458-1363.

Filed: August 6, 1985, 2:01 p.m.
TRD-857100

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State Board of Canvassers

Friday, August 16, 1985, 10:45 a.m. The State Board of Canvassers, of the Office of the Secretary of State, will meet in Room 127, State Capitol, Austin. According to the agenda, the board will conduct the official canvass of the special election for state representative, District 140, Harris County, held on August 10, 1985, pursuant to Texas Civil Statutes, Article 8.38 and Article 4.12 (3).

Contact: Melinda Nickless, 908 Sam Houston Building, Austin, Texas 78711, (512) 475-3091.

Filed: August 6, 1985, 4:30 p.m.
TRD-857113

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Texas State Board of Examiners of Dieticians

Friday, August 16, 1985, 9:30 a.m. The Texas State Board of Examiners of Dieticians will meet in Room T-803, Texas Department of Health, 1100 West 49th Street, Austin. Items on the agenda include approval of May 3, 1985, meeting minutes; the executive secretary's report, the chairman's report, and committee reports; the adoption of 22 TAC §711.2(u) concerning fees; review and action on a contract for use of the registration examination for licensing purposes; the ratification of applications approved by the executive secretary; review and action on applications for licensure, provisional licensure, and examination eligibility; review and action on expired licenses; the election of officers; executive session; other matters relating to the regulation of dieticians (not requiring board action); and the setting of the next meeting date.

Contact: Donna Hardin, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7501.

Filed: August 6, 1985, 3:38 p.m.
TRD-857112

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Texas Education Agency

Thursday, August 15, 1985, 8:30 a.m. The Texas Examination of Current Administrators and Teachers (TECAT) Advisory Committee of the Texas Education Agency (TEA) will meet at the Holiday Inn-Town Lake, IH 35 South and Towne Lake Road, Austin. According to the agenda, the committee will consider a project status report and update on the development of the TECAT including review procedures, scoring of the TECAT writing sample, and future project activities. The items will be reviewed by subcommittees, and that portion of the meeting at which actual test items are reviewed will be closed in accordance with Texas attorney general Opinion H-483 (1974) and H-484 (1974), which provide that the statutory directive to conduct examinations carries with it the authority to maintain the confidentiality of the questions to be asked.

Contact: Nolan Wood, 201 East 11th Street, Austin, Texas 78701, (512) 834-4090.

Filed: August 7, 1985, 4:22 p.m.
TRD-857171

Friday, August 16, 1985, 9 a.m. The Texas Examination of Current Administrators and Teachers (TECAT) Minority Bias Review Committee of the Texas Education Agency (TEA) will meet at the Holiday Inn-Town Lake, IH 35 South and Towne Lake Road, Austin. According to the agenda, the committee will consider a project status report and update on the development of the TECAT including a project description and charge to committee members and explanation of response form. The items will be reviewed by the committee, and that portion of the meeting at which actual test items are reviewed will be closed in accordance with Texas attorney general Opinion H-483 (1974) and H-484 (1974), which provide that the statutory directive to conduct examinations carries with it the authority to maintain the confidentiality of the questions to be asked.

Contact: Nolan Wood, 201 East 11th Street, Austin, Texas 78701, (512) 834-4090.

Filed: August 7, 1985, 4:23 p.m.
TRD-857172

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Advisory Commission on State Emergency Communications

Friday, August 16, 1985, 9 a.m. The Advisory Commission on State Emergency Communications will meet in Rooms 202–203, 15th and Colorado, Austin. According to the agenda summary, the commissic meeting to initiate a study of the feasil of implementing a statewide 911 emergency telephone service as directed by House Bill 1655, 69th Texas Legislature, 1985. The commission will review recent legislation and related developments on 911 service in Texas. It will consider the study approach, timetable, issues, research tasks, and subcommittee structure. A survey of existing 911 systems will be considered in addition to administrative items concerning the commission's operation.

Contact: Jay G. Stanford, P.O. Box 13206, Austin, Texas 78711, (512) 475-3728.

Filed: August 6, 1985, 3:42 p.m.
TRD-857107

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Texas Employment Commission

Thursday, August 15, 1985, 8:30 a.m. The Texas Employment Commission (TEC) will meet in Room 644, TEC Building, 15th Street and Congress Avenue, Austin. Items on the agenda include prior meeting notes; a public comment period; San Angelo premises matters; the Trinity building fire protection plan; presentation of bids on Walnut Creek property; the personnel system; implementation of procedures under House Bill 71, concerning worksharing; the Council on Disabilities; announcement on Commissioner Luna's new advisory council members; reports of administrative staff on programs operations, funding, and legislation; actions, if any, resulting from an executive session; and setting the date of and agenda items for the next meeting. The commission also will meet in executive session to discuss the Reed Act, the Joiner merit system appeal, Tullis *v.* Grisham, Ferguson *v.* Bell Helicopter, Texas *v.* TEC, *et al*, Ross *v.* TEC and Mercer, Oliver *v.* TEC, *et al*, and Gonzales *v.* the City of San Antonio.

Contact: C. Ed Davis, TEC Building, 15th Street and Congress Avenue, Austin, Texas, (512) 463-2291.

Filed: August 7, 1985, 3:37 p.m.
TRD-857164

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Office of the Governor

Friday, August 9, 1985, 10 a.m. The Juvenile Justice and Delinquency Prevention Advisory Board of the Criminal Justice Division of the Office of the Governor met in emergency session in Room 206, State Bar of Texas Building, 15th and Colorado, Austin. According to the agenda summary, the board considered recommendations for 86-C03 grant applications for juvenile justice projects and discussed recommendations for amendments in the Juvenile Justice and Delinquency Prevention Act of 1984 (Public Law 98-473). The emergency status was necessary because the board must act on these matters prior to the beginning of the fiscal year September 1, 1985.

Contact: Gilbert Pena, 201 East 14th Street, Austin, Texas 78701, (512) 475-3001.

Filed: August 6, 1985, 1:58 p.m.
TRD-857097

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Texas Statewide Health Coordinating Council

Thursday, August 22, 1985, 2 p.m. The Special Bylaws Committee of the Texas Statewide Health Coordinating Council will meet in Room T-507, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the committee will review the council's rules of procedures and bylaws.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: August 7, 1985, 2 p.m.
TRD-857163

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University of Houston System

Tuesday, August 13, 1985, 9 a.m. The Board of Regents of the University of Houston System will meet in the boardroom, Ezekiel Cullen Building, University of Houston-University Park, 4800 Calhoun, Houston. According to the agenda summary, the board will discuss and/or approve minutes, consent docket, acquisition, exchange or disposal of real property, university park housing plans, construction and land acquisition projects, facilities planning and building committee report and recommendations, finance committee report and recommendations, academic affairs and campus relations committee report and recommendations, regental policy committee report and recommendations, the fiscal year 1986 operating budget, salary increases, and the president's report.

Contact: Michael T. Johnson, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: August 6, 1985, 10:45 a.m.
TRD-857103

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Texas Department of Human Resources

Friday, August 16, 1985, 1 p.m. The EPSDT Dental Professional Advisory and Review Committee of the Texas Department of Human Resources will meet in Conference Room 4, East Tower, 701 West 51st Street, Austin. Items on the agenda summary include approval of the May 3, 1985, meeting minutes; old business concerning policy proposals on glass ionomers, and utilization review x-ray discrepancies, a change in anesthesia codes, the dental fee schedule, and program payment for sealants; and new business concerning analysis of dental U.R. discrepancy rates, family self-support branch re-alignment, and an advisory committee tracking report.

Contact: Bridget Cook, P.O. Box 2960, Austin, Texas 78769, (512) 450-4127.

Filed: August 7, 1985, 4:04 p.m.
TRD-857170

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Texas Industrial Accident Board

Friday, August 30, 1985, 9 a.m. The Texas Industrial Accident Board will meet in Room 107, first floor, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda summary, the board will adopt the following proposed rules published in the *Texas Register*, July 26, 1985: amendments to 28 TAC §41.10 (Rule 061.01.00.015), §43.5 (Rule 061.02.00.011), §51.5 (Rule 061.06.00.005), §53.25 (Rule 061.07.00.025), §53.35 (Rule 061.07.00.035) and §55.60 (Rule 061.08.00.200); new §41.175 (Rule 061.01.00.275), §49.131 (Rule 061.05.00.337), §53.65 (Rule 061.07.00.065), and §65.10 (1)(V) 061.13.00.020 (1)(V); the repeal of §55.55 (Rule 061.08.00.190) and §55.70 (Rule 061.08.00.210). The board also will consider adoption of proposed amendments to the Crime Victims Compensation Act, 28 TAC

§89.30 (Rule 061.20.00.006) and §89.150 (Rule 061.20.00.030.)

Contact: William Treacy, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: August 6, 1985, 10:10 a.m.
TRD-857094

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State Board of Insurance

Tuesday, August 6, 1985, 3 p.m. The State Board of Insurance met in emergency session in Room 414, 1110 San Jacinto Street, Austin. According to the agenda summary, the board named a new commissioner of insurance and a deputy commissioner for casualty insurance. The emergency status was necessary because the jobs needed to be filled to assure the proper ongoing functioning of the State Board of Insurance.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6328.

Filed: August 6, 1985, 12:30 p.m.
TRD-857096

Wednesday, August 6, 1985, 9 a.m. The State Board of Insurance met in emergency session in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board named a deputy commissioner for corporate and financial affairs. The emergency status was necessary because the job needed to be filled to assure the proper ongoing functioning of the State Board of Insurance.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: August 6, 1985, 5:23 p.m.
TRD-857128

Wednesday, August 14, 1985, 9 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board will consider a request by the Drivers License Training School for approval of an automobile insurance premium credit for individuals completing their drivers license training school-driver improvement program and a request by the Driver Training Center for approval of an automobille insurance premium credit for individuals completing their driver improvement program.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6328.

Filed: August 6, 1985, 12:47 p.m.
TRD-857105

Wednesday, August 14, 1985, 3 p.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board will consider a request for approval of the Texas Medical Liability Association management contract with the Texas Workers' Compensation Assigned Risk Pool; a petition by the Texas Workers' Compensation Assigned Risk Pool for amendment to the Texas Assigned Risk Pool reinsurance endorsement necessitated by amendments to Texas Civil Statutes, Article 5.76(g); a decision on agenda Items 10-85 and 38-85 presented at the 1985 fire and allied lines hearing; the proposed amendment of Rule 059.21.49.010 by amending Form TCPIA-365, concerning replacement cost endorsement for household goods, to broaden the availability of such endorsement for insureds with higher values of household goods.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6328.

Filed: August 6, 1985, 12:47 p.m.
TRD-857106

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Midwestern State University

Thursday, August 15, 1985. Committees of the Board of Regents of Midwestern State University (MSU) will meet in the boardroom, Hardin Building, MSU campus, Wichita Falls. Times, committees, and agendas follow.

3 p.m. The Executive Committee will discuss board meeting dates, the holiday schedule, policy matters, and recommendations concerning construction projects and buildings and grounds of MSU.

3:20 p.m. The Finance Committee will consider recommendations concerning allocations and transfers of MSU funds and approve the 1985-1986 operating budget.

5 p.m. The Personnel and Curriculum Committee will consider enrollment reports and small class reports for the first and second summer sessions and an administration recommendation for an extension of the one-year leave of absence for Dr. Cindy Phaneuf, assistant professor of theatre.

5:20 p.m. The Student Affairs Committee will consider recommendations for the renewal of a food service contract with PFM, the room and board rates for fiscal year 1985-1986, the health service physicians agreement for 1985-1986, the renewal of a contract for the printing of the MSU yearbook, and approval of a contract for identification cards at MSU.

5:40 p.m. The Athletics Committee will recommend the approval of a contract for the live radio broadcast of MSU basketball games during the 1985-1986 and 1986-1987 seasons and consider information presented concerning MSU sports and athletics developments.

6 p.m. The University Development Committee will consider a summary of MSU estimated gifts, grants, and pledges received to date in the 1984-1985 fiscal year.

Contact: Louis J. Rodriquez, Midwestern State University, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: August 8, 1985, 9:32 a.m.
TRD-857175-857180

Friday, August 16, 1985, 9 a.m. The Board of Regents of MSU will meet in the boardroom, Hardin Building, MSU campus, Wichita Falls According to the agenda, the board will cons der the approval of minutes; financial reports; the Nominating Committee Report; and recommendations by the Executive Committee, the Finance Committee, the Personnel and Curriculum Committee, the Student Affairs Committee, the Athletics Committee, and the University Development Committee; and the MSU president's report on various informational items. The board also will meet in executive session to discuss personnel and contractual matters.

Contact: Louis J. Rodriquez, Midwestern State University, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6551.

Filed: August 8, 1985, 9:33 a.m.
TRD-857181

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Texas Mohair Producers Board

Wednesday, August 21, 1985, 2 p.m. The Texas Mohair Producers Board of the Texas Department of Agriculture will meet at the Y.O. Hilton, 2033 Sidney Baker, Kerrville. Items on the agenda include the approval of the minutes of the last meeting; financial reports; grower programs; the hamanaka mohair trophy competition; the mohair preparation seminar—Menard, July 1985; and the Wool Act update.

Contact: Robert M. Paschal, P.O. Box 5337, San Angelo, Texas 76902, (915) 655-3161.

Filed: August 8, 1985, 9:06 a.m.
TRD-857174

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Public Utility Commission of Texas

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

Wednesday and Thursday, September 18 and 19, 1985, 3 p.m. and 7 p.m. respectively. A regional public hearing to consider Docket 5023—application of CP&L, HL&P, and SWEPCO for a ±400 kV HVdc transmission line from the Walker

County Station south at the Matagorda Station at the South Texas Nuclear Project.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 7, 1985, 2:57 p.m.
TRD-857162

Monday, October 21, 1985, 10 a.m. A hearing on the merits in Docket 6397—application of Texas-New Mexico Power Company for a notice of intent for a certificate of convenience and necessity for a proposed generating station/unit (coal-fired).

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 6, 1985, 2:52 p.m.
TRD-857104

Monday, January 13, 1986, 10 a.m. A hearing on the merits in Docket 5914—application of Travis County Water Control and Improvement District 17 for a certificate of convenience and necessity to provide water utility service within Travis County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 7, 1985, 9:11 a.m.
TRD-857147

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State Securities Board

Friday, August 16, 1985, 9 a.m. The State Securities Board will meet at 4100 First City Center, 1700 Pacific Avenue, Dallas. Items on the agenda include the July 19, 1985, meeting minutes; the development of an agency positive action program; the evaluation of the agency's participation in the North American Securities Administrators Association, Inc. (NASAA); a general update on agency operations with reports from Peggy Peters, director of the Dealer Registration Division, William Kuntz, director of the Securities Registration Division, A. J. Ellisor, director of the Enforcement Division; Ken Huff, chief of staff services, and Richard D. Latham, securities commissioner; and new business items, if any, for subsequent board meetings. The board also will meet in executive session pursuant to Texas Civil Statutes, Article 6252-17, §2(g), to discuss personnel matters.

Contact: Richard D. Latham, 1800 San Jacinto Street, Austin, Texas 78711, (512) 474-2233.

Filed: August 7, 1985, 2:13 p.m.
TRD-857148

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Texas Surplus Property Agency

Monday, August 19, 1985, 9:30 a.m. The Governing Board of the Texas Surplus Property Agency will meet at 8611 Wallisville Road, Houston. Items on the agenda include the approval of the minutes of the last board meeting, a discussion of the fiscal year 1986 budget, the state audit, and the executive director's report.

Contact: Marvin J. Tizman, P.O. Box 8120, San Antonio, Texas 78208, (512) 661-2381.

Filed: August 7, 1985, 1:59 p.m.
TRD-857161

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Advisory Council for Technical-Vocational Education in Texas

Thursday, August 15, 1985, 10 a.m. The Executive Committee of the Advisory Council for Technical-Vocational Education in Texas will meet in Suite 424, Texas Employment Commission Annex Building, 12th and Trinity Streets, Austin. According to the agenda summary, the committee will discuss the State Board of Education's laboratory/on-the-job training rule change; discuss the State Board of Education's long-range plan for public education; discuss the council's presentation to the Texas Association of School Boards' directors; discuss the council's 1985-1986 schedule of work; discuss the Update '85 evaluation conference; hear a presentation on the high school Principles of Technology Program by Dr. Leno Pedrotti from the Center for Occupational Research and Development; discuss the council linkages with external agencies and groups; discuss plans for the council's August 28 meeting; and conduct other business.

Contact: Val Blaschke, TEC Annex Building, Suite 424, 12th and Trinity Streets, P.O. Box 1886, Austin, Texas 78767, (512) 475-2046.

Filed: August 7, 1985, 2:35 p.m.
TRD-857165

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Texas Women's University

Thursday, August 15, 1985, 1:30 p.m. The Board of Regents of Texas Women's University (TWU) will meet on the 16th Floor, Administration and Conference Tower, TWU campus, Denton. Items on the agenda summary include the June 27 minutes; personnel additions and changes; gifts and grants; agreements and contracts; federal funds; the sale of surplus property; insurance coverage; change orders; certificates of substantial completion; the summer, 1985, small class report; faculty promotions and tenure; the central telephone system; central meal services; organizational changes; the 1985-1986 operating budget; the policy relating to intellectual property; employee health insurance programs; American Express travel management services; the revised voluntary modification of employment policy; the policy relating to compensatory time; the policy relating to bonding Texas higher education assistance fund monies; studies for utilizing higher education assistance funds for remodeling projects; developments related to the TWU Houston Center; a resolution concerning grants by the Robert A. Welch Foundation; and a report of the president. The board also will meet in executive session.

Contact: Dr. Mary Evelyn Blagg Huey, Texas Women's University, Denton, Texas 76204, (817) 383-1466.

Filed: August 7, 1985, 2:02 p.m.
TRD-857169

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Texas Water Commission

The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Days, times, and agendas follow.

Wednesday, August 21, 1985, 10 a.m. The commission will consider the application of Raymond H. Windelm Jr., for proposed water quality Permit 12942-01, Washington County, Brazos River Basin; the application of Cameron County Fresh Water Supply District 1 for amendments of Certificates of Adjudication 23-15 and 23-64, Cameron County, Rio Grande Basin; and the petition filed by Herman R. and Marie Mayben to rescind Wastewater Discharge Permit 10250-01, as amended by the City of Pittsburg.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 7, 1985, 1:59 p.m.
TRD-857166

Thursday, August 22, 1985, 10 a.m. The commission will consider the application of the City of Denison for an amendment to Permit 10079, Red River Basin, Grayson County, and the application by Fred H. Holste for Proposed Water Quality Permit 12828-01, Harris County, San Jacinto River Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 7, 1985, 2 p.m.
TRD-857167

Thursday, August 22, 1985, 2 p.m. The commission will consider the application of

the City of Seabrook for Proposed Water Quality Permit 10671-02, Harris County, Trinity-San Jacinto Coastal Basin; the application by Homer N. Comeau for Proposed Water Quality Permit 13093-01, Brazoria County, San Jacinto Brazos Coastal Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 7, 1985, 2 p.m.
TRD-857168

Wednesday, September 11, 1985, 11 a.m. The commission will conduct a hearing on the petition for creation of Harris County Municipal Utility District 289, containing 305.3945 acres of land.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 6, 1985, 2:09 p.m.
TRD-857101

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Regional Agencies
Meetings Filed August 6

The Bosque County Appraisal District, Board, revised the agenda of a meeting to be held in the judges chambers, Bosque County Courthouse, Meridian, on August 15, 1985, at 7 p.m. Information may be obtained from David G. Cooper, P.O. Box 393, Meridian, Texas 76665, (817) 435-2304.

The Brown County Appraisal District, Board of Review, will meet at 403 Fisk, Brownwood, on August 15, 1985, at 1 p.m. Information may be obtained from Alvis Sewalt, 403 Fisk, Brownwood, Texas 76801, (915) 643-5676.

The Central Appraisal District of Erath County, Board of Directors, will meet at 1390 Harbin Drive, Stephenville, on August 14, 1985, at 10 a.m. Information may be obtained from James Bachus, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-7301.

The Dallas Area Rapid Transit, Personnel Committee, met at 601 Pacific Avenue, Dallas, on August 9, 1985, at 1 p.m. The Service Plan/Work Program Committee and Budget and Finance Committee met jointly at the same location on the same day at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 748-3278.

The Dallas County Appraisal District, Board of Directors, will meet at 2601 Live Oak, Dallas, on August 14, 1985, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2601 Live Oak, Dallas, Texas 75204, (214) 826-0030.

The Region I Education Service Center, Board of Directors, will meet at 1900 West Schunior, Edinburg, on August 15, 1985, at 6 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, (512) 383-5611.

The Region VI Education Service Center, Board of Directors, will meet in the Flag Room, First National Bank Building, Huntsville, on August 15, 1985, at 5:30 p.m. Information may be obtained from M. W. Schlotter, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161.

The Region XII Education Service Center, Administrative Board of Directors, will meet at 401 Franklin Avenue, Waco, on August 15, 1985, at 2:30 p.m. Information may be obtained from Weldon O. Mills, P.O. Box 1249, Waco, Texas 76703, (817) 756-7494.

The Fisher County Appraisal District, Board of Directors, will meet at the Fisher County Tax/Appraisal office, on August 13, 1985, at 7:30 p.m. Information may be obtained from Clay Fowler, Route 1, P.O. Box D-38-B, Rotan, Texas 79546, (915) 735-2578.

The Garza County Appraisal District, Board of Directors, met in emergency session at the courthouse, Post, on August 8, 1985, at 9 a.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

The Hansford County Appraisal District, Board, will meet at 709 West Seventh Street, Spearman, on August 14, 1985, at 9 a.m. Information may be obtained from Alice Peddy, P.O. Box 567, Spearman, Texas 79081, (806) 659-5575.

The Hockley County Appraisal District, Board of Directors, will meet at 913 Austin Street, Levelland, on August 14, 1985, at noon. Information may be obtained from Keith Toomire, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

The Hale County Appraisal District, Board of Directors, met in emergency session at the central appraisal office, Plainview, on August 7, 1985, at 8 p.m. Information may be obtained from Neal Burnett, P.O. Box 29, Plainview, Texas 79072, (806) 293-4226.

The Lampasas County Appraisal District, Appraisal Review Board, met in emergency session at 403 East Second Street, Lampasas, on August 8, 1985, and will meet on August 13, 1985, at 9 a.m., and on August 14, 1985, at 2:30 p.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058.

The Lavaca County Central Appraisal District, Board of Directors, met at 113 North Main Street, Hallettsville, on August 12, 1985, at 6 p.m. The Appraisal Review Board will meet on August 13, 1985, at 10 a.m. Information may be obtained from J. P. Davis, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Lubbock Regional Mental Health and Mental Retardation Center, Board of Trustees, met in emergency session at 3800 Avenue H, Lubbock, on August 8, 1985, at noon. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 763-4213.

The Scurry County Appraisal District, Board of Directors, met in emergency session at 2612 College Avenue, Snyder, on August 6, 1985, at 8 p.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549.

The Trinity River Authority of Texas, Ten Mile Creek Regional Wastewater System Right-Of-Way Committee, will meet at 5300 South Collins Street, Arlington, on August 13, 1985, at 10:45 a.m. Information may be obtained from Jack C. Worsham, 5300 South Collins Street, P.O. Box 60, Arlington, Texas 76004-0060, (817) 467-4343.

The Tyler County Tax Appraisal District, Board of Review, met in emergency session at 103 Pecan, Woodville, on August 9, 1985, at 9 a.m., and will meet Monday through Friday, August 12-16, at 10 a.m. Information may be obtained from Mary E. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.
TRD-857095

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Meetings Filed August 7

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main, San Antonio, on August 19, 1985, at 5 p.m. Information may be obtained from Bill Burnette, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Cass County Appraisal District, Board of Directors, will meet at 208 West Houston Street, Linden, on August 13, 1985, at 10 a.m. Information may be obtained from Janelle Clements, P.O. Box 167, Linden, Texas 75563, (214) 756-7545.

The Region XV Education Service Center, Board of Directors, will meet at 612 South Irene Street, San Angelo, on August 15, 1985, at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6571.

The Guadalupe-Blanco River Authority, Board of Directors, will meet at 933 East Court Street, Seguin, on August 15 and 16, 1985, at 10 a.m. daily. Information may be

obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271, (512) 379-5822.

The Hays County Central Appraisal District, Board of Directors, will meet at the Hays courthouse annex, San Marcos, on August 13, 1985, at 6:30 p.m. Information may be obtained from Lynnell Sedlar, 102 LBJ Drive, Third Floor, San Marcos, Texas 78666.

The Hickory Underground Water Conservation District One, Board and Advisors, will meet at 1708 South Bridge, Brady, on August 15, 1985, at 7 p.m. Information may be obtained from Rick Illgner, P.O. Box 1214, Brady, Texas 76825, (915) 597-2152.

The Appraisal District of Jones County, Board of Directors, will meet at 1137 East Court Plaza, Anson, on August 15, 1985, at 9 a.m. Information may be obtained from John Steele, P.O. Box 348, Anson, Texas 79501, (915) 823-2422.

The Kendall County Appraisal District, Board of Directors, will meet at 207 East San Antonio Street, Boerne, on August 15, 1985, at 7 p.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

The Lamb County Appraisal District, Board of Directors, will meet at 318 Phelps Avenue, Littlefield, on August 15, 1985, at 8:30 p.m. Information may be obtained from Jack Sanford, Box 552, Littlefield, Texas 79339, (806) 385-6474.

The Mills County Appraisal District will meet at the county courthouse, Goldthwaite, on August 15, 1985, at 7:30 p.m. Information may be obtained from Doran E. Lemke, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253.

The Panhandle Ground Water Conservation District Three, Board of Directors, met at 300 South Omohundro, White Deer, on August 12, 1985, at 8 p.m. Information may be obtained from Richard S. Bowers, Box 637, White Deer, Texas 79097, (806) 883-2501.

The Wood County Appraisal District, Board of Directors, will meet in the conference room, 217 North Main, Quitman, on August 15, 1985, at 1:30 p.m. The Appraisal Review Board also met at the same location on August 20, 1985, at 9 a.m. Information may be obtained from Carson Wages, P.O. Box 951, Quitman, Texas 78783, (214) 763-4946.

TRD-857146

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Meetings Filed August 8

The Colorado River Municipal Water District, Board of Directors, will meet at 400 East 24th Street, Big Spring, on August 15, 1985, at 10 a. m. Information may be obtained from O. H. Ivie, P.O. Box 869, Big Spring, Texas 79720, (915) 267-6341.

The South Plains Association of Governments, Executive Committee, will meet at 3424 Avenue H, Lubbock, on August 13, 1985, at 9 a.m. The Board of Directors also will meet at the same location on the same day at 10 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 2787, Lubbock, Texas 79408, (806) 762-8721.

TRD-857173

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In Addition

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Economic Development Commission

Private Activity Bond Allocation Report

Private activity bonds (PABs) which were induced on or after June 19, 1984, are subject to a cap, as stipulated in the Federal Deficit Reduction Act of 1984. This cap is equal to $150 per capita or approximately $2.3 billion for the State of Texas for calendar year 1985.

Executive Order MW-27A states that the procedure for allocating this cap will be on a first-come, first-served basis, with the Texas Economic Development Commission (TEDC) being the tracking agency for the program. The information that follows is a summary report of the allocation activity for the week of July 29 through August 2, 1985.

Total allocated principal amount of private activity bonds authorized to be allocated by MW-27B through August 2, 1985:

$313,803,667.88

Comprehensive listing of bond issues which have received a reservation date as per MW-27B during the week of July 29 through August 2, 1985:

Issuer	User	Amount
City of League Industrial Development Corporation	Landing Convenience, a Texas Joint Venture	$925,000

Total principal amount of private activity bonds authorized to be allocated by MW-27B through August 2, 1985:

$296,260,310.63

Comprehensive listing of bonds issued as per MW-27B during the week of July 29 through August 2, 1985:

Issuer	User	Amount
Texas Small Industrial Development Corporation	S-Z Joint Venture I	$700,000
Lower Neches Valley Industrial Development Corporation	Ehrhart and Penland Enterprises	$2 million
City of Temple Industrial Development Corporation	Draughton-Miller Municipal Airport	$105,642.75
Port Arthur Facilities Development Corporation	Park Central Nursing Home, Ltd.	$2,830,000
Abilene Industrial Development Corporation	290 Cedar	$1 million
Longview Industrial Development Corporation	J. F. Zimmerman and Sons	$1.8 million
El Paso County Industrial Development Corporation	Philips Industries Inc.	$3 million
Cooke County Development Authority	Gainsville Associates	$4.2 million
Harris County Industrial Development Corporation	Interesin Corporation	$5 million

Issued in Austin, Texas, on August 7, 1985.

TRD-857143 Rebecca J. Heflin
Acting Executive Director
Texas Economic Development Commission

Filed: August 7, 1985
For further information, please call (512) 472-5059.

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Texas Department of Health

Opportunity for Public Hearing

North Texas Municipal Water District presently holds Solid Waste Permit 44 for the operation of a Type I 100.14-acre municipal solid waste site located inside the city limits of Sachse, adjacent to and on the west side of Hooper Road, and approximately 0.75 mile south of FM Road 544, in Collin County.

An amendment has been filed with the Texas Department of Health to add a 97.046-acre extension to the west side of the existing disposal site. The total site will consist of approximately 197.186 acres of land, and is to receive daily approximately 1,550 tons of solid waste under the regulatory jurisdiction of the department.

The application is being processed and the final decision will be made by the department pursuant to the provisions of the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the Texas Department of Health's Municipal solid waste management regulations, and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

No public hearing will be held on this application unless a person affected has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, has suffered or will suffer actual injury or economic damage by the granting of the application.

If a hearing is requested by a person affected, notice of such hearing will be provided to the requester and will also be published in a newspaper of general circulation in the area where the site is located at least 30 days prior to the date of such hearing. If no request for a hearing is received within 30 days of the date of publication of the said notice in a newspaper of general circulation, the Department will make a decision.

Requests for a public hearing and/or requests for a copy of the technical summary of the application prepared by the Bureau of Solid Waste Management shall be submitted in writing to the Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A copy of the complete application may be reviewed at the Bureau of Solid Waste Management or at the department's Public Health Region 5 headquarters, 2561 Matlock Road, Arlington, Texas 76014, (817) 460-3032.

Issued in Austin, Texas, on August 6, 1985.

TRD-857132 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: August 7, 1985
For further information, please call (512) 458-7271.

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Public Hearing

The Texas Department of Health will conduct public hearings on the following applications for solid waste disposal sites:

(1) Browning-Ferris, Inc., presently holds Solid Waste Permit 261 for the operation of a Type I 395.135-acre municipal solid waste site located inside the Houston city limits, adjacent to and on the north side of U. S. Highway 90, south of Ley Road, and approximately 0.9 mile east of FM Road 527, in Harris County. The permit holder has filed an application to amend the permit to add approximately 58 feet to the height of the existing 395-acre landfill; and to add 6.4997, 5.1287, 40.8815, and 17.2070 acres to the northeast, northwest, southeast, and south sides, respectively, of the existing site.

Only the 40.8815-acre parcel on the southeast side will be dedicated to landfilling operations. The total site will consist of 464.8519 acres of land and is to receive daily approximately 3,900 tons of solid waste.

The public hearing will be held on Tuesday, September 3, 1985, 1 p.m., Holiday Inn, 10155 East Freeway (IH-10 East), Houston.

(2) The City of Corsicana has filed Application 1467 for a permit to operate a proposed Type I municipal solid waste disposal site to be located southeast of Corsicana, approximately 0.9 mile southeast of the intersection of IH 45 and State Highway 31 and approximately 0.5 mile south of the intersection of Jester Drive and State Highway 31, adjacent to the south side of the present city landfill and the west side of the wastewater treatment plant, in Navarro County.

The public hearing will be held on Tuesday, September 10, 1985, 10 a.m., City Commission Chambers, City Government Center, 200 North 12th Street, Corsicana.

(3) The City of Cleburne has filed Application 1784 for a permit to operate a proposed Type V municipal solid waste processing facility (incinerator with an energy recovery unit) to be located within the city limits of Cleburne on the east side of Commerce Boulevard (County Road 1022) approximately 0.7 mile south of the intersection of County Road 901 and County Road 1022, in Johnson County.

The public hearing will be held on Wednesday, September 11, 1985, in the City Council Chambers, City Hall, 302 West Henderson, Cleburne.

(4) Waste Management of Fort Worth, Inc., has filed Application 1004-B for an amendment of their permit 1004-A to add 50.088 acres to the east and southeast sides of the existing 116.7-acre Type I municipal solid waste disposal site located at 5300 East First Street, Fort Worth.

The proposed site will be bounded on the north by East First Street and bounded on the east by Randol Mill Road.

The proceedings at the hearing for this application amendment will be limited in scope to preliminary procedural matters such as establishing jurisdiction, taking public comment, designating parties, establishing a discovery schedule and selecting a time and place to reconvene the hearing to begin the presentation of evidence for and against the issuance of a permit for the aforesaid application. The hearing will be held on Tuesday, September 17, 1985, in Room 262, Tarrant County Convention Center, 1111 Houston Street, Fort Worth.

Issued in Austin, Texas, on August 6, 1985.

TRD-857133 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: August 7, 1985
For further information, please call (512) 458-7271.

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Public Hearings on Proposed Rules

The Texas Department of Health will conduct public hearings on the following proposed actions on rules:

(1) proposed new 25 TAC §217.82, concerning frozen dessert fees; published in the July 30, 1985, issue of the *Texas Register* (10 TexReg 2474). The new section will cover definitions; the issuance, renewal, and revocation of permits and inspectional fees; and hearing procedures. The public hearing will be held on Thursday, August 15, 1985, 9 a.m., in the Texas Department of Health auditorium, 1100 West 49th Street, Austin. For further information, contact Kirmon C. Smith, Director, Division of Milk and Dairy Products, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(2) proposed new 25 TAC §99.1, concerning the reporting of occupational diseases; published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2399). The new section will cover definitions, reporting requirements, confidentiality of reports, general control measures for reportable occupational diseases, and the list of reportable occupational diseases, including acute occupational pesticide poisoning. The public hearing will be held on Monday, August 19, 1985, 9 a.m., in the Texas Department of Health auditorium, 1100 West 49th Street, Austin. For further information, contact Dr. Charles E. Alexander, Chief, Bureau of Epidemiology, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(3) proposed new 25 TAC §205.44, concerning a registration fee for manufacturers of hazardous substances;

published in the July 26, 1985 issue of the *Texas Register* (10 TexReg 2400). The new section will apply to all manufacturers of hazardous substances whose products are distributed in Texas and will cover the registration fee, the registration statement, the procedure for filing the statement with the department, and procedures for denying, suspending, or revoking the statement. The public hearing will be held on Thursday, August 22, 1985, 9 a.m., Texas Department of Health Auditorium, 1100 West 49th Street, Austin. For further information, contact R. D. Sowards, Jr., Chief, Hazardous Products Branch, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(4) proposed amendments to 25 TAC §§337.3, 337.4, 337.6-337.10, 337.12, 337.13, 337.17, and new 25 TAC §337.18, concerning drinking water standards governing drinking water quality and reporting requirements for public water systems; published in the August 13, 1985, issue of the *Texas Register*. The major changes consist of adding a new section on fees for services to drinking water systems, amending sections to reduce the required frequency of microbiological testing for smaller water systems, allow chlorine residual monitoring for substitution of monthly bacteriological samples, allow up to 20 mg/l nitrate (as N) levels in noncommunity public water systems, allow substitution of consecutive daily microbiological samples for a positive routine monthly sample, modify public notification requirements, and delete dates which have been passed and are no longer applicable. The public hearing will be held on Monday, September 16, 1985, 10 a.m., in the Texas Department of Health auditorium, 1100 West 49th Street, Austin. For further information, contact Thomas D. Tiner, P. E., Director, Division of Water Hygiene, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3192.

(5) proposed new §217.81, concerning milk and milk product fees; published in the July 30, 1985, issue of the *Texas Register* (10 TexReg 2472). The section will cover definitions; issuance, renewal and revocation of permits; permit and inspectional fees; and hearing procedures. The public hearing will be held on Tuesday, September 17, 1985, 9 a.m., in the Texas Department of Health auditorium, 1100 West 49th Street, Austin. For further information, contact Kirmon C. Smith, Director, Division of Milk and Dairy Products, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Issued in Austin, Texas, on August 6, 1985.

TRD-857134 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: August 7, 1985
For further information, please call (512) 458-7236.

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Texas Department of Human Resources
Consultant Contract Awards

In compliance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Resources (DHR) furnishes this notice of consultant contract award. The notice of consultant proposal request appeared in the June 14, 1985, issue of the *Texas Register* (10 TexReg 1999).

Service to be provided is the implementation and refinement of a pre-employment workshop program for recipients of aid to families with dependent children (AFDC). The contractor will provide 15 to 25 workshops to train eight to 12 workshop leaders to lead successful workshops. The contractor will develop marketing strategies and materials to enlist employers for AFDC recipients in the job training work experience pilot. The contractor will provide training for DHR staff on employer recruitment. A job bank of 100 employers participating in the grant diversion aspect of the pilot will be established.

The contractor selected is CareerWorks, Inc., 2025 Cedar Springs, Dallas, Texas 75201.

The contract began July 29, 1985, and will end September 30, 1986; the value of the contract is $50,000.

The due date for reports is November 1, 1986.

Issued in Austin, Texas, on August 7, 1985.

TRD-857130 Martin W. Johnston
Commissioner
Texas Department of Human Resources

Filed: August 7, 1985
For further information, please call (512) 450-3766.

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In compliance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Resources (DHR) furnishes this notice of contract awards. The consultant proposal requests appeared in the April 9, 1985, issue of the *Texas Register* (10 TexReg 1192).

Two contracts have been awarded. One is Yoakum Psychological and Psychiatric Associates, 3703 Yoakum, Suite 203, Houston, Texas 77006. The services to be provided are court testimony, psychological and psychiatric assessments, psychological testing, and therapy/counseling. The total value of the contract is $84,000. The other is Houston Child Guidance Center, 3214 Austin Street, Houston, Texas 77004. The services to be provided are court testimony, testing, assessment, and counseling. The total value of the contract is $60,000.

The contracts begin September 1, 1985, and end August 31, 1986.

All reports are due within time frames as specified in the contracts.

Issued in Austin, Texas, on August 7, 1985.

TRD-857131 Martin W. Johnston
Commissioner
Texas Department of Human Resources

Filed: August 7, 1985
For further information, please call (512) 450-3766.

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State Board of Insurance
Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

(1) Application for admission to do business in Texas of Western United Life Assurance Company, a foreign life insurance company. The home office is in Spokane, Washington.

(2) Application for incorporation of Algonquin Life Insurance Company, to be a domestic life insurance company. The home office is in Arlington.

(3) Application for a name change by American Financial Assurance Corporation, a foreign casualty in-

surance company. The home office is in White Plains, New York. The proposed new name is Financial Security Assurance, Inc.

(4) Application for admission to do business in Texas of Lovelace Health Plain, Inc., a foreign health maintenance organization. The home office is in Albuquerque, New Mexico.

(5) Application for incorporation of CareAmerica Texas, to be a domestic health maintenance organization. The home office is in The Woodlands.

(6) Application for admission to do business in Texas of MidAmerica Mutual Life Insurance Company, a foreign insurance company. The home office is in Minneapolis, Minnesota.

(7) Application for a name change by Hanseco Reinsurance Company, a foreign fire and casualty insurance company. The home office is in Wilmington, Deleware. The proposed new name is John Hancock Reinsurance Company.

(8) Application for a name change by Scotsmen Life Insurance Company, a domestic life insurance company. The home office is in Austin. The proposed new name is International American Life Insurance Company

(9) Application for incorporation of Latin American/Texas Insurance Company, to be a domestic fire and casualty insurance company. The home office is in Houston.

(10) Application for admission to do business in Texas of Diamond Guaranty Insurance Company, a foreign fire and casualty insurance company. The home office is in Tulsa, Oklahoma.

(11) Application for admission to do business in Texas of Redland Insurance Company, a foreign fire and casualty insurance company. The home office is in Council Bluffs, Iowa.

(12) Application for admission to do business in Texas of Agri General Insurance Company, a foreign casualty insurance company. The home office is in West Des Moines, Iowa.

(13) Application for a name change by Morrison Assurance Company, Inc., a foreign fire and casualty insurance company. The home office is in Tampa, Florida. The proposed new name is First Southern Insurance Company.

(14) Application for incorporation of MegAssurance Indemnity Corporation, to be a domestic fire and casualty insurance company. The home office is in Waco.

(15) Application for incorporation of PacifiCare of Texas, Inc., to be a domestic health maintenance organization. The home office is in to be in San Antonio.

Issued in Austin, Texas, on July 30, 1985.

TRD-857093 James W. Norman
Chief Clerk
State Board of Insurance

Filed: August 6, 1985
For further information, please call (512) 475-2950.

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Texas Department of Mental Health and Mental Retardation

Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Department of Mental Health and Mental Retardation serves notice of invitation for offers on the following project.

This invitation for offers is for a continuation of services currently performed by Penelope Cargonne. The Texas Department of Mental Health and Mental Retardation intends to award the contract to the present contractor unless a better offer is submitted.

Description of Services. Under the contract, consultant will continue a study, analysis, and monitoring of case management programs in the Texas Department of Mental Health and Mental Retardation facilities and community centers and continue the development of a case management training program. All information will be compiled and submitted to the central office of the Texas Department of Mental Health and Mental Retardation. Specific activities include developing a case management training program; assisting the Texas Department of Mental Health and Mental Retardation and the community centers for mental health and mental retardation services in the implementation of the training program; and monitoring the implementation and continuation of case management services.

Evaluation Criteria. The contractor must have a minimum of a bachelor's degree and 10 years experience in the field of mental health and mental retardation case management. Experience should include the areas of long range and operation planning, analysis on a comprehensive as well as programmatic basis, interagency cooperation, and knowledge of the structure of the Texas state government and those agencies serving the mentally ill and mentally retarded.

Contact Person. Prospective offerors should contact Gary E. Miller, M.D., Commissioner of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, (512) 465-4501.

Issued in Austin, Texas, on August 5, 1985.

TRD-857098 Gary E. Miller, M.D.
Commissioner
Texas Department of Mental Health and Mental Retardation

Filed: August 5, 1985
For further information, please call (512) 465-4591.

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Texas Water Commission

Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of July 29-August 2, 1985.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 475-2678.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Period of July 29-August 2, 1985

Dupont De Nemours and Company, Alvin; Class I hazardous and industrial solid waste storage facility; approximately five miles south of FM Road 2004 at FM Road 2917 within a 366.28 acre tract of land within the Perry and Austin League 2, the City of Alvin, Brazoria County; HW-50057-000; new permit

Akzona, Inc., doing business as Akzo Chemie America, Pasadena; Class I hazardous/noncommercial industrial solid waste storage facility; 13000 Baypark Road in Pasadena, Harris County; HW-50072-000; new permit

Exxon Research and Engineering Company, Baytown; Class I hazardous/industrial solid waste storage facility; approximately one mile north of Houston Ship Channel at 4500 Bayway Drive, on a 33.98 acre tract of land, the City of Baytown, Harris County; HW-50045; new permit

The City of Wills Point, Wills Point; wastewater treatment plant; approximately 6000 feet south of US Highway 80 and 4000 feet east of State Highway 47, Van Zandt County; 10623-01; amendment

City of Haskell, Haskell; wastewater treatment plant; approximately one mile south and ¼ mile east of the intersection of US Highway 380 and US Highway 277, Haskell County; 10728-01, amendment

Koch Refining Company, Corpus Christi; petroleum refinery; northwest of the intersection of Up River and Viola Roads (County Road 51-A), northwest of the City of Corpus Christi, Nueces County; 00531; amendment

Harris County Fresh Water Supply District 1A, Baytown; wastewater treatment facility; approximately ¼ mile north of the intersection of Wade Road and IH 10, north of the City of Baytown, Harris County; 11195-01; renewal

Southwestern Public Service Company, Lubbock; steam electric power station; approximately two miles east of the intersection of US Highway 84 and State Highway 331, southeast of the city of Lubbock, Lubbock County; 01312; amendment

Cliffs Development, Limited, Grayford; reverse osmosis unit and sewage treatment facility; adjacent to Possum Kingdom Lake immediately west of State Highway 16, south of the Brazos River, Palo Pinto County; 02789, new permit

Lake Travis Independent School District, Austin; wastewater treatment facility; 607 North Ranch Road 620, approximately 2.5 miles northeast of Ranch Road 620 and Lohmannford Road in Travis County; 12920-02; new permit.

...tin, Texas, on August 2, 1985.

Mary Ann Hefner
Chief Clerk
Texas Water Commission

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...on, please call (512) 463-7905.

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